NEW SERIES—No. 9.

SELECTIONS FROM THE RECORDS

OF THE OFFICE OF THE

FINANCIAL COMMISSIONER, PUNJAB.

NOTE.—*These papers are printed in continuation of Selection No. XXIV. of 1869.*

Published by Authority.

No. 35.

CONTENTS.

THE "CIVIL AND MILITARY GAZETTE" PRESS.

Contractors to the Punjab Government.

1887.

SELECTIONS FROM THE RECORDS OF THE FINANCIAL COMMISSIONER'S OFFICE, No. 35.

No. LXIII.—BOUNDARIES OF VILLAGES AND DISTRICTS SUBJECT TO RIVER ACTION.

No. 1353, dated Lahore, 1st April 1878.

From—LEPEL GRIFFIN, Esquire, Officiating Secretary to Government, Punjab,
To—The Secretary to the Financial Commissioner, Punjab.

I am desired to forward herewith, for the favour of the Financial Commissioner's opinion, copy of the Bill to define and amend the law relating to alluvion, avulsion, islands formed in streams, and abandoned river-beds.

2. The opinion should reach this office by the first week in June.

A
BILL
TO

Define and amend the law relating to alluvion, avulsion, islands, and abandoned river-beds.

Preamble.

WHEREAS it is expedient to define and amend the law relating to alluvion, avulsion, islands, and abandoned river-beds; it is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Alluvion Act, 1878."

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactments.

2. The Acts, Regulation and Rules, mentioned in the schedule hereto annexed, shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in Acts and Regulations passed subsequently thereto, shall be read as if made to this Act.

Local usage saved.

Burden of proof.

3. Nothing herein contained shall affect any clear, definite and immemorial local usage respecting the right of riparian owners to alluvial land; but the burden of proving such usage shall lie on the person alleging it. And nothing herein contained shall affect any local law relating to the assessment of land-revenue, or to the enhancement or abatement of rent, or shall confer on any owner of a bank or shore, in respect of which he is hereby declared to be entitled to alluvial land, an island or an abandoned river-bed any title to such land, island or river-bed higher or more free from encumbrance than that which he has to the bank or shore.

Interpretation-clause.

4. In this Act—

"island" includes a sandbar and any other accumulation of land; but it excludes (*a*) land in a river submerged in the wet season, and visible only in the dry season, and (*b*) land in a tidal river or the sea, submerged by the ordinary flow of the tide, and visible only at low water:

"navigable river" means a river in which navigation by boats can be carried on at all seasons of the year:

"sea" includes arm of the sea:

and a channel is said to be "fordable," when it can be crossed on foot by a man of average height at some one season of the year.

II.—*Alluvion.*

Right to alluvial land on bank or shore.

5. When, from natural causes, land forms by imperceptible degrees on the bank of a river or on the shore of the sea or an island, either by accumulation of material, or by recession of the river or sea, the owner of the bank or shore shall be entitled to the land so formed.

Provided that, when the land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed.

III.—*Avulsion.*

Right to part of bank suddenly removed.

6. If a river carries away by sudden violence a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part so carried away remains entitled thereto, unless and until his right is extinguished under the Indian Limitation Act, 1877, section 28.

IV.—*Islands.*

Right to islands in navigable rivers or the sea where channel is fordable.

7. An island formed, from natural causes, in a navigable river or in the sea, either by accumulation of material, or by recession of the river or sea, belongs to the Crown:

provided that, when the island is first formed, the channel between the bank or shore and such island is not fordable:

provided also that, when the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

Right to other islands.

8. If when an island is first formed, as aforesaid, in a navigable river or in the sea, the channel between the bank or shore and such island is fordable;

or if an island is formed, as aforesaid, in a river which is not navigable, the following rules shall take effect (namely):

When the island is formed in the sea, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea opposite the island.

When the island is formed in a river, and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on the side on which the island is situate are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island.

When the island is formed in a river, and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks, in proportion to the frontage which they respectively have on the river opposite the island.

Islands formed by division of rivers.

9. If a river, in forming a new arm, divides itself and surrounds land belonging to the owner of the bank, and thereby forms an island, such owner is entitled to the island.

V.—*Abandoned River-beds.*

Right to abandoned river-beds.

10. If a river, whether navigable or not, forms a new bed, abandoning its ancient bed, the ancient bed is supposed to be divided by what was the thread of the stream immediately before the abandonment, and the owners of the ancient banks are severally entitled to the division opposite their banks, in proportion to the frontage which they respectively have on the ancient bed:

Provided that, when the ancient bed is proved to have been, immediately before the abandonment, the property of the Crown, or of a private person, it shall continue to be the property of the Crown or of such person, as the case may be.

THE SCHEDULE.

(*a*). Acts of the Governor-General in Council.

Number and year.	Subject.	Extent of repeal.
IV of 1872 ...	Punjab Laws Act ...	So much as relates to Bengal Regulation, XI of 1825.
XX of 1875 ...	Central Provinces Laws Act...	Ditto.
XVIII of 1876 ...	Oudh Laws Act ...	Ditto.

(*b*). Bengal Regulation.

Number and year.	Subject.	Extent of repeal.
XI of 1825 ...	Alluvion ...	The whole.

(*c*). Bengal Act.

Number and year.	Subject.	Extent of repeal.
IV of 1868 ...	Amending Act IX of 1847 ...	Sections 2 and 4.

(*d*). Rules.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to form a chapter of the Indian Civil Code, and its object is to state, in a concise, accurate and accessible form, the law relating to the ownership of alluvial lands, islands and abandoned river-beds. In Madras, Bombay and Burma there is no statutory law on the subject; in Sindh there are only some executive rules, which are held to have the force of law: in the rest of British India the law is contained partly in legal text-books, partly in the Bengal Regulation XI of 1825, and the Bengal Act IV of 1868, sections 2 and 4, but chiefly in the numerous decisions of the High Courts and the Judicial Committee of the Privy Council with which the former enactment is encrusted.

Regulation XI of 1825 provides rules for land gained from a river or the sea by gradual accession; for avulsion; for islands formed in navigable rivers and the sea; for islands formed in "small and shallow rivers, the beds of which, with the jalkar [or] right of fishery, may have been heretofore (*i.e.*, before 26th May 1825) recognised as the property of individuals." But it does not provide for the case when an alluvial deposit takes place on a site of which, though it has been submerged, the ownership is ascertained. It declares that an island formed in a navigable river belongs to the adjoining proprietor or to the Crown, according as the channel between it and the adjacent land is fordable or unfordable. But it does not define "navigable" or "fordable;" nor state the time with reference to which the question of fordability or non-fordability is to be decided, nor show when an island can be said to be formed. It declares that an island formed in a navigable river shall, where the channel is fordable, be an accession to the land "of the person or persons whose estate or estates may be most contiguous

to it." But this does not, apparently, provide for cases where the island is partly on one side and partly on the other of the thread of the stream, nor for cases where there are several riparian owners, and the island cannot be said to be nearer to the property of one than to that of another.

The Bill attempts to supply these defects as follows:—

It declares, in accordance with Roman law and the decision of the Judicial Committee in *Lopez* v. *Muddun Thakur*, that when land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed. It defines "navigable" as meaning navigable at all seasons of the year. It declares that a channel is "fordable" when it can be crossed on foot at some one season of the year by a man of average height; and when a channel, which is not fordable when the island appears, becomes fordable afterwards, it fixes the first appearance of the island as the date with reference to which the question of fordability or non-fordability is to be determined. The subsequent junction of the island to the mainland will thus not affect the right of the Crown. Lastly, it excludes from the term "island" land submerged in the wet season and visible only in the dry, and land in a tidal river or the sea which is submerged by the ordinary flow of the tide and visible only at low water.

As regards the rights of riparian owners to islands, the Bill applies the same rules to an island formed in the sea or a navigable river, when the channel between it and the adjacent land is fordable, and to an island formed in a river which is not navigable. These rules are as follows:—

"When the island is formed in the sea, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea opposite the island.

"When the island is formed in a river, and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on the side on which the island is situate are severally entitled to the island in proportion to the frontage which they respectively have on the river opposite the island.

"When the island is formed in a river, and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the bank are severally entitled to the division opposite their banks, in proportion to the frontage which they respectively have on the river opposite the island."

Lastly, the Bill declares that, when any river forms a new course, abandoning its ancient bed, the owners of the ancient banks are entitled to the ancient bed, in proportion to their respective frontages. It is believed that this is in accordance with the existing law (Suth. W. R. 1864, p. 106), and it seems less likely to encourage litigation, than to provide (as is done by some systems) that the owners of the land newly occupied shall take the ancient bed, each in proportion to the land of which he has been deprived.

The Bill advisedly leaves untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion, and to the rent payable in respect of such lands.

WHITLEY STOKES.

Calcutta, 29th January 1878.

No. 432, dated 11th July 1878.

From—J. B. LYALL, Esquire, Settlement Commissioner, Mooltan and Deraját Divisions.
To—The Officiating Secretary to Government, Punjab.

I have the honour to give the opinion on the Indian Alluvion Draft Act called for in your No. 1355, of 1st April last.

Existing usages.

2. There are, as far as my experience goes, three customs in force in the Punjab proper.

The deep-stream rule.

The first is the deep-stream rule, which is known by various local names (*e.g., kishti-banna, kach-mach, dhár kalan, had sikandri*). Where this usage prevails in its pure or extreme form, as

I believe it still prevails on the upper part of the Beas, land which changes sides of the deep stream, changes owners whether it is identifiable or not, and islands between two streams, and alluvial lands forming against one bank also belong to the estate on the same side of the deep stream, without any reference to former ownership of site.

Modified form of the deep-stream rule.

The second is a modified form of the deep-stream rule, whereby an exception to change of ownership is admitted in the case of land left across the deep stream intact or in a recognizable state, and when once an estate has in this way acquired a footing on the opposite bank, then so long as such outlying plot is not lost by diluvion, all land gradually forming in the river between it and the parent estate belongs to such estate, without reference to the deep-stream rule. This modified form of the deep-stream rule prevails, to my knowledge, on some parts of the Rávi and Sutlej rivers in Mooltan and Montgomery, and I believe that it prevails on the lower part of the Beas.

The Wárpár rule.

The third is the rule commonly known as Wárpár or Lén-dén. This custom is based upon the supposition that the whole bed of the river belongs to some estate or other, either to the existing estates on the banks, or to them and to some for the time non-existing estate which has been entirely swept away by the river: it assumes that the boundaries of these estates are of a fixed character and meet under water. The great rivers of the Punjab, particularly in the south part of the Province, are not shut in by high banks; or, if there are high banks, they are wide apart and enclose not the mere river channels, but broad tracts of alluvial country. Great changes, therefore, frequently occur in the channels of these rivers: villages separated by the river find themselves on the same side of it, and several miles away from the new channel; and others which formerly had a high and dry boundary, find themselves separated from each other by the river. In the latter case, the position of the old boundaries, which existed before the river covered the land, is more or less accurately remembered, and when the land re-forms or emerges, the former owner of the site recovers possession, even when the land has re-formed as an island beyond mid-stream, or against another estate on the opposite bank of the river. Disputes of course occur as to the identity of site, and in the absence of maps and measurements, the burden of proof naturally falls upon the person claiming across the deep stream or (in the case of an engulfied estate) out of the bed of the river; but such disputes do not affect the principle of the rule. The right of the owner of the site by this custom is, of course, dormant so long as the land is actually used by the river as its bed: the bed, till abandoned by the river is, like the water, the property of the public or of the State.

This Wárpár custom prevails to my knowledge on the Indus, from where it leaves the hills at Kálabágh to the frontier of Sindh; on the Jhelum in the Jhang district; on the Chenáb in Jhang, and between Mooltan and Muzaffagarh; on the Chenáb or Panjnád between Muzaffagarh and Baháwalpur; on that part of the Rávi which is below the Sidhnai in Mooltan; and on the greater part of the Sutlej between Mooltan and Baháwalpur. I believe it also prevails on the upper part of the Jhelum, and on parts of the Rávi in Montgomery and Lahore.

In some districts the Wárpár boundaries in land under water have been fixed and shown in maps.

3. In the course of settlement operations now in progress in the Bannu, Dera Ismail Khan and Jhang districts, the Settlement Officers have determined the Wárpár boundaries under water as well as out of water of all estates in those districts situated on the Indus, Jhelum, Chenáb and Rávi rivers, and have shown such boundaries in their settlement maps. On the Indus in Bannu and Dera Ismail Khan, and that part of Dera Gházi Khan which fronts Dera Ismail, the same boundaries have also been shown in the Revenue Survey maps lately made of that part of the Deráját. A congregated village map has been made, showing all the villages in the bed of the Indus. These measures were sanctioned by Government. I proposed them in a letter No. 105, of 27th August 1872, to the Secretary to Financial Commissioner, which contained a report on the custom of Wárpár on the Indus.

The same work might with advantage have been effected by the Settlement Officers, Mooltan and Muzaffargarh, in regard to Wárpár boundaries on the

Chenáb, Sutlej and Indus; but they hesitated, with some reason, to attempt it, and it has not been done.

Character and result of present usages.

4. It is generally admitted that the deep-stream rule is a very bad one. I have myself seen how very unfairly the pure form of it works in the Gurdáspur district: it gives to one village for a few years more land than they can make use of, and leaves the zamíndárs of opposite villages sitting idle on the bank waiting for the river to turn. Government loses revenue in this way, and the value of property in river villages is depreciated, and when the custom is modified by the exception of recognizable lands, it is almost as unsatisfactory to proprietors, and much more troublesome to the courts. The question, whether a plot of land is recognizable or not, that is, whether it is an old bank or island rather damaged by flood water, or a newly formed bank or island, is often a fine one, and not easy to decide; yet the whole existence of an estate, into which the river is cutting may depend upon its stopping the advance of the opposite estate by proving a title to some such plot in the river. The most unscrupulous claims and counter-claims are advanced every year, and are supported by the rankest perjury. Petty officials are bribed, and the facts are so obscured, that a long trial often ends in a wrong decision, or a right one is set aside in appeal.

The Wárpár custom is good in principle, but so long as the boundaries of estates under water are not determined and shown in maps, it gives rise to as much demoralizing litigation as the modified deep-stream rule.

The wording of Section 3 of the proposed Act is very stringent. Unless the burden of proof will be shifted by Section 16 of the Land Revenue Act, where usage is recorded in settlement papers, the Act is likely to subvert and disturb existing usage and practice in many localities.

5. In the Punjab, as far as my experience goes, the Courts have hitherto almost everywhere admitted that some local usage exists; they have, I think, very rarely based their decisions upon Bengal Regulation XI. of 1825, and not upon alleged custom. Records of rights have been made in settlement for every village, in every district, and contain, in the case of river-side villages, what purport to be declarations of custom regarding rights to alluvial land. This brings me to the first remark I have to make upon the proposed Bill. By Section 16 of the Land Revenue Act, declarations of custom in such records of rights are presumed to be true. I presume that, in spite of Section 3 of the Bill, the burden of proof, that there is no clear, definite and immemorial custom, will lie upon the person denying the validity of a custom alleged and supported by a declaration in the record of rights. If this view is correct, then the Bill is not likely to have much effect in the Punjab. The courts' decisions (except in a few localities where there may admittedly be no definite custom) will continue to be in accordance with the recorded usage, and with the precedents of former decisions in the same locality. But if I am wrong, then, as the words "clear, definite and immemorial" are very stringent, and as it is much easier for a court to interpret an Act, than to ascertain by patient inquiry from loosely worded administration papers and oral evidence, all the features of local usage, I apprehend that the Bill may make great changes. What are the changes which the Act would be likely to produce, and how far such changes are desirable, are separate questions which must be considered with reference to the other Sections of the Bill.

Effect of Section 5.

6. Section 5, taken with its proviso, is in accordance with the Wárpár rule, but is opposed to the deep-stream rule, pure or modified. The proviso, as to ownership of site, would work very unfairly in localities where the deep-stream rule has prevailed, if the last ownership or proprietary possession of site was taken as the test. The estates or villages from which the rivers happened to have receded at the time village surveys were made, would be able to prove ownership of the site of large areas, though the real ownership thereof has always depended upon the position of the river for the time being, and passed from hand to hand accordingly. It would be a good thing to abolish this deep-stream rule of custom, but I do not see how it can be fairly done, except by dividing the debateable land in and about the bed of the river by arbitration, and then adopting the principle of fixed boundaries.

Definition of avulsion.

7. I do not believe that avulsion, of the nature described in Section 6, really occurs. We say in common parlance that the river carries away land and bears it to the opposite bank; but it is really the river that moves, and not the solid land: the river cuts for itself

a new channel, and the land changes sides of the river in consequence. This has been ordinarily called avulsion in the Punjab; and, if I am not much mistaken, it is all that ever happens.

Usage as to islands in navigable rivers. The rule of the unfordable channel a new rule in the Punjab.

8. There is not, as far as I know, any customary rule on the Punjab, rivers by which an island forming in a navigable river is Crown property if the channel between it and the mainland is not fordable. Where, in recognition of the Wárpár custom, we have mapped the whole river bed as within the bounds of the adjacent estates, no such island will be claimable by the Crown, unless it sets aside the settlement records. Where the rights to islands forming in river beds have not been so determined, the adjacent estates would often not be able to prove former possession of the site of an island; but past custom or practice, and the declaration of custom in Settlement Records, would probably entitle one or the other of the adjacent estates to the island, whether the channel was fordable or not. I know that in former years the Punjab Government has now and then taken possession of islands, or of blocks of new alluvial land not of the nature of islands, where land was wanted for plantations, and the amount of waste in possession of a village seemed excessive; but the land-holders have always denied the justice of such appropriations, and asserted them to be contrary to usage. The rule of the unfordable channel is, I think, a new rule in the Punjab, and I am not sure that it would work fairly, as the burden of proof of ownership of site would be on the person claiming against it. My experience leads me to think that it is rarely, if ever, expedient for Government to claim the ownership of islands or excess waste lands in the beds of the Punjab rivers. The proprietors of estates in such positions require very large areas to ensure their always having sufficient land for their cultivation. Whenever new land forms, it is pretty sure that some old land disappears.

Effects of Sections 8, 9, 10.

9. Section 8 is, I think, in accordance with the custom which I call the rule of deep-stream; but it would sometimes clash with the Wárpár custom. I do not understand why the second proviso to Section 7 is not also attached to this section.

Section 9 is opposed to the pure or extreme form of the deep-stream rule. Section 10 is, I think, not opposed either to the deep-stream rule or to the Wárpár custom.

The term, "owner of bank" perhaps open to misconstruction in the Punjab.

10. The term "owner of the bank," used throughout the Bill, might, I think, be misconstrued in the Punjab. The local usages in force, which I have described, decide the question of property between townships or villages. After this is decided, there remains the question whether the land won belongs to all the proprietors of a village jointly, or to an individual or individuals. This question depends upon the tenure of the village, the custom of the village, and the nature and position of the land. Is it not possible that the courts might hold the term "owners of the bank" to apply to individual proprietors who might happen to hold the land forming the actual bank in severality? I remember a suit regarding an island on the Indus, in which, some 15 years ago, a High Court of appeal in the Punjab so interpreted a similar phrase in a village-administration paper; the decision thoroughly upset the tenure of the village, and litigation in one form or another has been going on ever since.

An Act for the Punjab should, I think, only attempt to decide the question of property between village estates as units.

Definition of "thread of the stream."

11. In your No. 1513, of 10th April, I was directed to give an opinion on the proper definition of the expression "thread of the stream." I think that suggested by the Secretary to Government of India (*viz.*, the middle line of what is the main stream during the dry season) is the best that could be suggested for the Punjab rivers. It is the line of the deep-stream rule. But I do not see how such line can be marked out, as it would be a moving one.

Apprehends that the Bill is likely in practice to subvert and disturb much existing usage; so would prefer separate legislation for the Punjab when necessary.

12. On the whole, I am afraid of the proposed Act, in spite of the saving clause as regards custom. I fear that, whichever way the legal point raised in paragraph 5 of this letter be decided, the courts will be likely to bring a new Act into greater play than the old Regulation has been brought hitherto in the Punjab. The native judges of the modern

school always try hard to bring statute law into a case by hook or by crook, just as the native pleaders do. I believe that the law of the Bill is a better law than that of the Regulation. If, therefore, the Bill only took its place, there would be nothing to be said against the change. But practically in the Punjab, the old Bengal Regulation was only referred to when no reasonably definite local usage could be discovered. Will this Bill, if enacted, be used in the same way, or will good evidence of clear, definite and immemorial usage be exacted? In the latter case, I think the result will be bad and disturbing, particularly in the localities where the deep-stream rule now prevails; so I should prefer to see things left as they are in the Punjab. We might wait for legislation on the subject till we felt its necessity, and then ask for a special Act for the Province. I venture to think that it is dangerous to make Acts applicable to the whole of British India in regard to rights of landed property.

No. 3626, dated Simla, 28th October 1878.

From—LEPEL GRIFFIN, Esquire, Officiating Secretary, Government, Punjab,

To—The Secretary, to the Financial Commissioner, Punjab.

I am desired to forward herewith, for the favour of an opinion by the Financial Commissioner, copy of a Bill to define and amend the law relating to alluvion, islands and abandoned river-beds. This Office Proceedings in the Home Department, No. 14 A. for August 1878, copy of which is also forwarded, will show the line of criticism adopted by the Punjab Government with reference to the first draft of the Bill.

2. Your reply should, if possible, reach this office by the 1st December next.

A

BILL

TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

Preamble. WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

I.—Preliminary.

Short title. 1. The Act may be called "The Indian Alluvion Act, 1879."

Local extent. It extends to the whole of British India;

Commencement. And it shall come come into force at once.

Repeal of enactments. 2. The Acts, Regulation and Rules mentioned in the schedule hereto annexed, shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act

Interpretation-clause. 3. In this Act—

"island" includes land arising in a river or lake submerged in the wet season, and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea, submerged by the flow of ordinary tides.

"thread of the stream" means, (*a*) the middle line of the main-stream during the dry season, or (*b*) the middle line between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought, or (*c*) the middle line of the particular channel in which the island referred to arises;

"owner" means, in the case of a bank or shore held on raiyatwári tenure, the Crown: in the case of a bank or shore forming part of land situate in the Presidency of Bombay, and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in prepetuity, the holder of such land; and in the case of a bank or shore held by a village community in the Punjab, such community;

"sea" includes bay, inlet, creek and arm of the sea, and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours.

II.—*Alluvion.*

Right to alluvial land on bank or shore.

4. Where, form natural causes, land forms gradually on the bank of a river or on the shore of the sea, of a lake, or of an island, either by accumulation of material, or by recession of the river, sea or lake, the owner of the bank or shore shall be entitled to the land so formed:

Provided that, where the land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed.

III.—*Islands.*

Right to islands where channel is not fordable.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material, or by recession of the river, sea or lake, if when the island is first formed, the channel between the bank or shore and such island is not fordable at any point, the Crown is entitled to such island:

Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

Right to other islands.

6. If, when an island is first formed as aforesaid, in a river, the sea or a lake, the channel between the bank or shore and such island is fordable at any point, the following rules shall take effect (namely):

(*a*) Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island, in proportion to the frontage which they respectively have on the sea or lake opposite the island:

(*b*) Where the island is formed in the river, and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island, in proportion to the frontage which they respectively have on the river opposite the island:

(*c*) Where the island is formed in a river, and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks, in proportion to the frontage which they respectively have on the river opposite the island:

(*d*) Provided that, where the island is formed on a site of which a private person is proved to be the owner, such person is entitled to the island.

Explanation.—"Frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river, and the frontage is "opposite" the island when a perpendicular erected at any point thereof in the plane of the sea, lake or river, intersects the island.

Islands formed by division of rivers.

7. If a river, in forming a new arm, divides and surrounds land belonging to the owner of the bank, and thereby forms an island, such owner is entitled to the island.

IV.—*Abandoned River-beds.*

Right to abandoned river-beds.

8. If a river, whether navigable or not, suddenly forms a new bed, abandoning its ancient bed, the ancient bed is supposed to be divided by what was the thread of the stream immediately before the abandonment, and the owners of the ancient banks are severally entitled to the division opposite their banks, in proportion to the frontage which they respectivelly have on the ancient bed:

Provided that, when the ancient bed is proved to have been, immediately before the abandonment, the property of the Crown or of a private person, it shall continue to be the property of the Crown, or of such person, as the case may be.

V.—*Miscellaneous.*

Power to declare "main-stream," "dry season" and "thread of the stream."

9. The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

(*a*) what shall be deemed to be, for the purposes of this Act, the "main-stream" and the "dry season:" and

(*b*) which of the said definitions of "thread of the stream" shall be deemed to be in force.

Every such declaration shall be published in the official Gazette, and shall thereupon have the force of law.

In the absence of a declaration under clause (*b*), as to any river or part thereof, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

Savings.

10. Nothing herein contained shall—

(*a*) affect any law relating to the assessment of land-revenue, or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore, in respect of which he is hereby declared to be entitled to alluvial land, to an island or to an abandoned river-bed, any title to such land, island or river-bed, better than that which he has to the bank or shore; or

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

(*e*) authorize any encroachments by private persons on the beds or channels of navigable rivers; or

(*f*) prevent any officer of Government duly empowered in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(*g*) prevent any officer of Government, duly empowered in this behalf, from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

Local usage.

And nothing herein contained shall affect any clear, definite and immemorial local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Punjab Land-Revenue Act, 1871, section 16) the burden of proving such usage shall be on the person alleging it.

Burden of proof.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

11. All land and islands formed, and all river-beds abandoned, as mentioned respectively in Sections 4, 5 and 8, and not vesting under any of the provisions hereinbefore contained, shall vest in the Crown.

THE SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IV of 1872 ...	Punjab Laws Act	So much as relates to Bengal Regulation XI of 1825.
XX of 1875 ...	Central Provinces Laws Act ...	Ditto.
XVIII of 1876...	Oudh Law Act	Ditto.

(*b*). Bengal Regulation.

Number and year.	Subject.	Extent of repeal.
XI of 1825 ...	Alluvion	The whole.

(*c*). Bengal Act.

Number and year.	Subject.	Extent of repeal.
IV of 1868 ...	Amending Act IX of 1847 ...	Sections 2 and 4

(*d*). Rules.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and diluvion in Sindh ...	Paragraphs 1, 2, 3, 4, 5, and 20.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to form a chapter of the Indian Civil Code, and its object is to state, in a concise, accurate and accessible form, the law relating to the ownership of alluvial lands, islands and abandoned river-beds. In Madras, Bombay and Burma, there is no statutory law on the subject; in Sindh there are only some executive rules which are held to have the force of law: in the rest of British India the law is contained, partly in legal text-books, partly in the Bengal Regulation XI of 1825, and the Bengal Act IV of 1868, sections 2 and 4, but chiefly in the numerous decisions of the High Courts and the Judicial Committee of the Privy Council with which the former enactment is encrusted.

Regulation XI of 1825 provides for land gained from a river or the sea by gradual accession; for avulsion; for islands formed in navigable rivers and the sea; for islands formed in "small and shallow rivers, the beds of which, with the jalkar [or] right of fishery may have been heretofore [*i.e.*, before 26th May, 1825] recognised as the property of individuals." But it does not provide for the case when an alluvial deposit takes place on a site of which, though it has been submerged, the ownership is ascertained. It declares that an island formed in a navigable river belongs to the adjoining proprietor or to the Crown, according as the channel between it and the adjacent land is fordable or unfordable. But it does not define "fordable;" nor state the time with reference to which the question of fordability or non-fordability is to be decided, nor show when an island in a tidal river or the sea can be said to be formed. It declares that an island formed in a navigable river shall, where the channel is fordable, be an accession to the land "of the person or persons whose estate or estates may be most contiguous to it." But this does not, apparently, provide for cases where the island is partly on one side and partly on the other of the thread of the stream, nor for cases where there are several riparian owners, and the island cannot be said to be nearer to the property of one than to that of another.

The Bill attempts to supply these defects as follows:—

It declares, in accordance with the decision of the Judicial Committee in *Lopez* v. *Muddun Thákur*, that when land forms on a site of which a private person is proved to be the owner, such person is entitled to the land so formed. It declares that a channel is "fordable" when it does not exceed five feet in depth in the dry season and throughout the twenty-four hours; and when a channel which is not fordable when the island appears, becomes fordable afterwards, it fixes the

first appearance of the island as the date with reference to which the question of fordability or non-fordability is to be determined. The subsequent junction of the island to the main-land will thus not affect the right of the Crown. Lastly, it includes, in the term "island," land arising in a river submerged in the wet season, and visible only in the dry, but excludes from that term land arising in a tidal river or the sea, which is submerged by the flow of ordinary tide.

As regards the rights of riparian owners to islands, the Bill applies the same rules to an island formed in the sea, a lake or a navigable river, when the channel between it and the adjacent land is fordable at any point, and to an island formed in a river which is not navigable. These rules are as follows:—

"Where the island is formed in the sea or a lake, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake opposite the island.

"Where the island is formed in a river, and is wholly on one side of what was the thread of the stream immediately before the formation, the owners of the bank on that side are severally entitled to the island, in proportion to the frontage which they respectively have on the river opposite the island.

"Where the island is formed in a river, and is partly on one side and partly on the other of what was the thread of the stream immediately before the formation, the island is supposed to be divided by such thread, and the owners of the banks are severally entitled to the division opposite their banks in proportion to the frontage which they respectively have on the river opposite the island."

And as the same definition of "thread of the stream" will not suit all the rivers in British India, or even all the parts of the same river, three definitions of this expression are given, and the Local Governments are empowered to declare which of them shall in each case be applicable.

The Regulation is also defective, in not providing for the case of what Roman lawyers termed *agri limitati*. When land is granted by the State in a plot with a specified area, and such land is enlarged by alluvion, the increment should not become the property of the owner of the plot. The Bill (section 10, clause (*c*) contains a provision to this effect, which, it is believed, will be especially useful in Bombay.

When a river suddenly forms a new course, abandoning its ancient bed, the Bill declares that the owners of the ancient banks are entitled to the ancient bed, in proportion to their respective frontages. This is in accordance with the existing law (Suth. W. R., 1864, p. 103), and it seems less likely to encourage litigation than would be the provision (found in some systems), that the owners of the land newly occupied shall take the ancient bed, each in proportion to the land of which he has been deprived.

Where a bank or shore is held on raiyatwárí tenure, the Crown is, for the purposes of the Bill, to be deemed the riparian owner. The effect will be, in Madras and Burma, to continue the present practice, according to which the Government is, as a rule, entitled to alluvial lands and to islands arising in rivers. In the Bombay Presidency, where a bank or shore is wholly or partially exempt from revenue, or is held under a grant or lease fixing the Government demand in perpetuity, the holder will be deemed the riparian owner.

The Bill advisedly leaves untouched the law relating to the assessment of alluvial lands and lands diminished by diluvion, to the rent payable in respect of such land, and to the rights of mortgagees and lessees to alluvial increments to the lands comprised in their mortgages and leases. These matters, it is thought, are or may be more fitly provided for by special enactments. The Bill is also silent as to avulsion, an event which, though provided for in Bengal Regulation XI of 1825, is said never to occur in any part of British India.

No. 599C., dated Simla, 27th August 1878.

From—LEPEL GRIFFIN, Esquire, Officiating Secretary to Government, Punjab.

To—The Secretary to the Government of India, Department of Revenue, Agriculture and Commerce.

I AM directed to reply to your letter of the 20th instant, No. 542, asking for the opinion of His Honor the Lieutenant-Governor on the Bill to define and amend the law regarding alluvion, avulsion, islands, and abandoned river beds. The delay in furnishing an opinion on this Bill has been caused by the non-receipt of replies from officers especially fitted to speak with authority on the subject, and which it was necessary for the Lieutenant-Governor to be in possession of before replying to the requisition of the Government of India. Most of the replies* of the officers selected, with the exception of that of the Financial Commissioner, which will be hereafter forwarded, are now enclosed as an annexure to this letter; and I am, further, to convey the following remarks embodying the opinion of the Lieutenant-Governor on the general principles and effects of the Bill as drafted :—

* *Opinions by*—
Mr. H. M. Plowden.
Mr. J. W. Smyth.
Mr. G. R. Elsmie.
Colonel W. G. Davies.
Colonel C. A. McMahon.
Mr. J. W. Macnabb.
Mr. A. Brandreth.
Mr. H. E. Perkins.
Colonel C. H. Hall.
Major A. Harcourt.
Mr. J. Frizelle.
Mr. T. W. H. Tolbort.
Mr. D. C. Macnabb.
Major E. G. Wace.
Colonel S. F. Graham.
Mr. M. Macauliffe.
Colonel A. A. Munro.
Major C. E. Macaulay.
Mr. H. St. G. Tucker.
Major W. G. Waterfield.
Major L. J. H. Grey.
M. F. W. R. Fryer.
Mr. J. B. Lyall.

2. There is, perhaps, no part of India which is more affected by river action than the Punjab. To the extreme west, the Indus each year causes important changes in the physical features of the country, while the Jumna bounds its eastern districts. Between these flow the important rivers, Jhelum, Ravi, Chenab, Beas and Sutlej; and the approximate length of river-bed and bank exposed to the action of these great rivers may be stated as 3,600 miles. In addition to these large rivers, there are, especially in the northern districts of the province, many smaller ones, which, in the rainy season, contain a large volume of water, and from their vicinity to the hills and the inclination of the country become powerful agents in altering existing land-marks. It is obvious that in a country like the Punjab, where the village community system is still in a high state of preservation, and where custom has for many centuries been the principal rule determining the conditions of property, there would arise a large and varied body of customary law having reference to the natural action of rivers upon the lands immediately bordering on them. These customs have been determined partly by the special characteristics of the rivers themselves, and partly by the degree of association or antagonism of the proprietary body occupying the opposite banks. It would perhaps be generally found that, where there has been a homogeneity between the proprietors living on the opposite banks of a particular river, or where, as in the lower portions of the Indus, a Biluch proprietary hold the soil more united in tribal feeling than the ordinary village communities of the Punjab, the custom has been to consider the whole river-bed as belonging, with immoveable boundaries, to the village on either bank, so that, whether above or below water, the area in the possession of the village was assumed to be the same. In other parts of the Province where the village communities are more independent of each other, and where neighbouring villages are peopled by men of different descent, the deep-stream rule has been in force,—the land, whether capable of identification or not, changing owners with reference to the position of the deep-stream; while a third rule, very general in application, is also found on many rivers, by which, the deep stream being still acknowledged as the ordinary boundary of properties, owners are permitted to follow, across the stream, land which could be recognized as theirs, and which has, by a change in the course of the river, been transferred to the opposite bank.

3. The Lieutenant-Governor is not prepared to affirm that all parts of the principal rivers of the Punjab are governed in the matter of change by river action by customary laws so definite, clear and immemorial as to be superior in validity to any general Statute law which may now be framed; but he is convinced that the greater proportion of the Punjab rivers are subject to such customary rules well known to the people, and ordinarily admitted by the Courts and by the Administration Papers of the Land Revenue Settlement. The Bill now before the Legislative Council, therefore, will, so far as the

Punjab is concerned, be exceptional in its operation; and to this Province its inapplicability will be chiefly due to the fact that the enforcement of the Statute law will be the exception, and not the rule. For this His Honor understands to be the intention of the Legislature in Section 3 of the Bill, which, with the intention of saving local usage, has declared that "nothing herein contained shall affect any clear, definite and immemorial local usage respecting the right of riparian owners to alluvial land." Such being the case, and the Lieutenant-Governor being strongly of opinion that it would be altogether inadvisable, and opposed to the principles on which legislation in India proceeds, to ignore any well-proved existing customs which have hitherto regulated property in its changes by river action, he would wish the section here quoted to be so altered as to avoid all possibility of doubt as to the course which the Courts should take in administering the proposed law. It is stated that the burden of proving any clear, definite or immemorial usage shall lie on the person alleging it; but I am to point out that, by Section 16 of the Land Revenue Act, declarations of custom in such records of right are presumed to be true. Unless the present Bill be intended to modify the law as thus declared in the Land Revenue Act, it will follow that the burden of proving usage should not lie upon the person alleging it, but that the presumption in favour of the alleged custom should be held to be good if it be in accordance with the statement contained as to such custom in the Settlement record of the village. For all districts of the Punjab records of right have been framed; and in the case of riverside villages declarations of the custom in force and to be observed in the case of changes made by the action of the stream are set forth in these records. It is, then, in accordance with these statements in the record of rights that the Courts should determine claims to rights of property, to rights of ownership or occupancy affected by river action, and the burden of proof should rest with the person who denies the custom thus authoritatively laid down and declared by Law to be presumably true. If Section 3 be amended in the manner desired by the Lieutenant-Governor, he has no general objection to offer to the principle of the Bill; for it will only affect the Punjab in exceptional cases where no reliable custom is proved to prevail.

4. But His Honor is apprehensive that it will be difficult to obtain, after the passing of the present measure, that degree of regard for clear and definite custom which is desirable, and indeed necessary. He would invite attention to the concluding paragraph of the opinion of Mr. J. B. Lyall, Settlement Commissioner, in which he entirely agrees. He believes that it is dangerous to make laws applicable to the whole of British India in regard to rights of landed property, and he considers that the temptation to the Courts to apply an existing Statute law rather than to enquire laboriously into the existence of local custom will give rise to considerable inconvenience and dissatisfaction.

5. In the foregoing remarks the Lieutenant-Governor does not desire to be understood to express an opinion in favour of any one or more of the various customs which prevail on this subject in the Punjab. He considers it probable that, in some cases, considerable hardship is caused by adherence to local usage; but, with rivers so variable in their course as those of this Province, inequalities have a tendency in time to retrieve themselves. The people are used to their customs, and unwilling to abandon them, and the principle which upholds the validity of custom in this Province is amply asserted in the Punjab Laws Act and the Revenue Act.

6. Many remarks on the details of the Bill in the opinions of the several officers now submitted will doubtless attract the attention of the Committee; and I am only to notice two or three points which appear to the Lieutenant-Governor to require present mention. The first of these concerns Chapter 3, Section 6, on *avulsion*. This section the Lieutenant-Governor would desire to see redrawn, as he does not think that it expresses with sufficient precision the true river action which is intended to be described. What is here called avulsion is ordinarily, and in connection with the action of the rivers of North India, no more than a sudden change of the river bed. The bank itself is not removed and borne to the opposite side or to another part of the bank, but the river abandons a certain course and assumes a different one.

7. A second point of considerable importance concerns the use of the word "owner" in several sections of the Bill, which will clash with the ordinary sys-

tem of proprietary right in this Province. The village, and not the individual, is the unit; and land affected by river action should be treated, whether in determining the ownership of islands, or the gradual accretion of land by alluvion, its rapid loss by diluvion, or its sudden loss by so-called avulsion or change of the river bed, as the property of the villages possessing the land on the banks, and not as belonging to individual proprietors. The question, so far as the Law Courts and the Government revenue are concerned, is with the proprietary body, and not with individuals; and although individuals are really immediately affected by river action in their proprietary holdings, yet their gain and loss is finally arranged by the mutual agreement of the whole proprietors of the village. In certain tenures the distribution of new land or the burden of the loss of land will differ with the different tenures of villages. In the case of a *zamíndári* village, the new land would go to the joint owners or a single owner as the case might be. If the tenure were *pattidári* it would be by shares, and if it were *bhaiachára*, some village custom would doubtless apportion the new property to the several holders. For these rersons, the Lieutenant-Governor holds that the village, and not the owner, should be considered as affected by such river action as forms the subject of the present measure.

8. With regard to "islands" discussed in the IV Chapter of the Bill, there has been more diversity of practice in the Punjab; but, ordinarily, custom will be found to determine most disputed cases. There can be no doubt that islands formed in river-beds are ordinarily claimed by the adjoining villages, although there are instances of the Government, for its own purposes, taking possession of such when necessary for plantations or otherwise. Some obscurity, moreover, rests on the use of the expression "from natural causes" in the 7th section, all islands being, in the strict meaning of the term, formed by natural causes. The only case in which an island may, by a permissible stretch of language, be said to be formed artificially, is where works may have been constructed, such as spurs in the immediate neighbourhood of a bridge, which have so deflected the course of the stream as to cause the formation of a new island therein. Here it would, in the opinion of the Lieutenant-Governor, be not unreasonable for such an island to become the absolute property of Government if the *detritus* of which it was formed was borne from land acquired by or belonging to Government. If the fluviatile denudation has, in the formation of the new island, affected land not the property of the Government, then the Lieutenant-Governor can see no reason why the Government should assert a claim thereto; and its proprietorship would, in case of local custom, be governed thereby.

9. I am, lastly to observe that the Lieutenant-Governor considers it necessary to state in the Act at what period before the occurrence of the change in Section 8 the "thread of the main stream" should be observed. It will of course be difficult to obtain evidence of what was, previous to a flood which has changed the features of the country, the thread of the main stream: but the Court in which any disputed case is taken must decide upon the best evidence procurable. The Lieutenant-Governor believes that a definition of the "thread of the stream," as the middle line of the main stream in the dry season is most suitable to the Punjab rivers; at all events, except in a small part of the course of some of them. He does not, however, consider that it will be practicable to erect new fixed boundaries on the banks determining the thread of the main stream; seeing that from year to year the principal rivers of the Punjab change their course so greatly that the labour of survey and re-erection of boundary marks would be an annually recurring one.

No. 148, dated 8th February 1879.

From—J. A. E. Miller, Esquire, Secretary to Financial Commissioner, Punjab,
To—The Secretary to Government, Punjab.

With reference to your letter No. 3626, of 28th October 1878, forwarding for the opinion of the Financial Commissioner, a copy of the revised Draft Bill to define and amend the law relating to alluvion islands and abandoned river beds, I am directed to forward a memorandum by Mr. Lyall on section 7, relating to islands formed by diversion of rivers, and section 10, last clause, relating to local usage; and to add that, Mr, Lyall's opinion, the Bill, as now

drafted, is an improvement on the existing law (Bengal Regulation XI. of 1825) if the clause at the end of section 10 can be relied upon to save local usage, and to put in the case of usage entered in records of rights the burden of proof on the person who denies such usage; but he thinks the definition of usage there given is too stringent, as explained in the annexed memorandum.

Memorandum by J. B. LYALL, Esquire, Officiating Financial Commissioner, Punjab, on the Indian Alluvion Bill.

Section 7.—This seems obscure; would it not be better to say that if a river in forming a new arm divides and surrounds land, and thereby forms an island, the ownership of the land of the island will not be affected by the change? What bank is alluded to; the new or the old? The section as it stands might be held in the Punjab to give land so converted into an island to the village community, though, in reality, it might be the particular holding of an individual member of the community, and continuously occupied and cultivated by him, notwithstanding the formation of the new arm of the river.

Section 10, *last clause*.—I would substitute the words "well established" for "clear, definite, and immemorial," which words, for reasons given in my opinion as Settlement Commissioner, are, I think, too stringent. I know of cases in which between opposite estates well established, definite customs are in force; but such customs are not immemorial. In some of these cases the original custom down to annexation was the deep-stream rule, pure and simple, and this, being a harsh rule in practice has, since annexation, been modified by mutual agreement, or as the result of a compromise or of the awards of arbitrators in matters of dispute. In other cases the *wárpár* rule has been abandoned, within memory, in favor of the deep-stream rule, with the consent, or by the mutual agreement, of opposite estates, and for many years they have abided by the deep-stream rule. It would not be advisable or equitable to suddenly upset such well-established usages because they are not immemorial.

Memorandum on the Alluvion Bill by D. C. J. IBBETSON, Esquire, Settlement Officer, Karnál.

Saving of custom.

I confess that this is one of the few matters as to which I think it would be well to supersede native custom, and substitute for it a fixed rule; not necessarily the same for the whole of India, but at any rate the same for each set of rivers marked by similar physical characteristics. It seems to me that the two principal reasons why it is usually so important to save existing customs are—first, the great number and infinitely varied nature of the peoples and countries for which we legislate; and secondly, our necessary ignorance of the minute details which make up the social life of those peoples. Customary rights have sprung up in various forms under conditions varying from tract to tract, and the forms which they have assumed are usually strange and unfamiliar to occidental experience. We do not know nearly all the customs, and do not always understand those we know. We are acquainted with but few of the conditions; and the network of custom is so interwoven that, if we cut it at any one point, we cannot tell how many meshes may not be unloosed by our action. Many of these customs might probably be modified, not only to the advantage, but also with the approval, of the people who are bound by them. But it is impossible to consider each case by itself, or make a separate rule for each tract: it is dangerous to make a general rule for all, and so we avoid a danger which we cannot measure by saving all existing customs.

It is obvious, however, that the necessity for this precaution increases in geometrical progression with the breadth of the subject-matter of any proposed legislation, with the precision with which the rights treated of are to be defined, and with the generality of the rules which are to be laid down concerning them. Now, in this case our legislation is confined to an isolated and clearly circumscribed point; and it only lays down a rule by which it shall be decided, in certain cases, which of two or more parties shall exercise general rights of ownership in given land, without in any way defining these rights; so that it does not affect those intricate rights and liabilities attached to Indian real property, the complicated and important nature of which renders it so essential to protect them

from being rashly or roughly handled, and, in the Punjab at least—and it is of the Punjab only that I speak—existing customs are well defined, thoroughly known, simple and few, so that at least we are not working in the dark.

If, however, those customs were in their nature good, or even if they were clung to tenaciously by the people, I would not, merely for the sake of uniformity, propose to supersede them. But it is admitted that the deep-stream rule, pure and simple, is harsh and inequitable; and that in its modified form it is still open to most serious objections, from which the *wárpár* rule is comparatively free. It appears, also, that, in some cases at least, the people are dissatisfied with their existing deep-stream custom; and I cannot help thinking that these circumstances combine to make the case under consideration one in which a superstitious fear of meddling with anything sanctified by the name of custom should not hold us back from substituting an enquitable and uniform rule for the varying and unsatisfactory customs at present in force.

I confess that I am strongly in favor of fixing once and for all the boundaries of villages bordering on Punjab rivers, independently of the situation of the stream. Of course there would be a certain amount of hardship involved in stereotyping the state of things existing at any given time, but no more than is involved in all hard-and-fast rules, and therefore in all legislation. I do not think it would be enough to provide for village communities changing their custom if they so wished; for it would be seldom if ever possible to get all parties to agree to a change which must in some degree cause loss to one or other of them. These remarks apply only to customs as regulating the division of land *between villages*. I would save customs regulating the internal relations of members of village communities—See my Section 10 below.

Rule for dividing the land between owners on opposite banks.

2. The Bill, however, saves local customs, and lays down a principle which is to be applied in the absence of such custom. So far as it determines the bank to the owners of which the land shall belong, this general principle is that all land newly formed or exposed on either side of the thread of the stream will belong to the owners of the bank on that side of the stream. I cannot but think that infinitely the simplest way would be to fix village boundaries once for all, partitioning out the bed of the stream between them. Officers would have to be deputed to fix these boundaries; but no new survey would be needed, as the revenue survey shows both sides of the river up to permanent land marks. Where a revenue survey has not been made, the settlement of boundaries might be deferred till the deficiency was supplied. The principle that property is limited by the thread of the stream might advantageously be followed in first fixing these boundaries. And if it be thought impracticable or inadvisable to fix the boundaries permanently, the principle seems to me the best that could be adopted.

Rule for dividing the land between owners on the same bank.

3. The rule by which the land will be divided between several owners on the same bank is that "the owners are severally entitled to the land on their side of the thread* in proportion to the frontage which they respectively have on the river opposite the land." Now, this clause, read with the explanation of "frontage" and "opposite," given at the end of Section 6, seems to me radically bad; and in many cases it is, as far as I can see, difficult, if not impossible, to divide land in accordance with it.

The word "opposite" as defined in the Bill.

4. The word "opposite" is no doubt, as pointed out by Mr. Stokes in Council, "as clear and simple a word as exists in the English language," and the same might be said of "frontage." But though I should find but little difficulty in interpreting the language of the Bill were the explanation absent, I do find the very greatest difficulty in reconciling the definitions of the explanation with what appears to me to be the ordinary meaning of the terms defined. A reference to the enclosed figures will show some of the startling results that spring from the definitions now proposed. Of course the cases are purposely exaggerated; but similar

* *Note.*—A comparison of clauses (*b*) and (*c*) in Section 6 shows clearly that the words "division opposite their banks" refer exclusively to the division lying on one side or other of the thread of the stream, and not to any division between owners on the same side.

difficulty would crop up in almost every case. The continuous black line is the river bank; the dotted black lines the village boundaries; the small circles the terminal pillars where those boundaries meet the bank: the continuous red lines are "frontages" under the Bill, the dotted red lines are perpendiculars to those frontages in the plane of the river; the blue line is the thread of the stream. In *figure* 1 the island M is not "opposite" *any* frontage at all, and therefore goes to the Crown. In *figure* 2 the island N is, under the explanation of Section 6, opposite, not the frontage of either of the villages AB, BC, or CD, but that of EF; and will, therefore, so far as the figure goes, belong wholly to it. Moreover, the village EF will claim a share in islands O and P, and in *every* other island for miles down, so long as the stream preserves its direction unaltered.

Similarly, DC will claim a share in O, as a perpendicular from its frontage intersects the island. In fact, under the *wording* of the Bill, a village might claim a share in two islands, one 500 miles up, and the other 500 miles down stream.

Two cardinal mistakes seems to be embodied in the explanation,—one is, the overlooking the geometrical fact that the perpendiculars drawn to two straight lines which meet at an angle from their point of intersection do not coincide, and the other is putting no limit to the distance to which the perpendiculars may be produced backwards and forwards. Besides this, there is the obvious impropriety of making the direction of the line which is to decide whether an island at one end of it is opposite a village or not, depend upon the local contour of the river bank at a spot often two or three miles off, where the other boundary of the village meets the river.

And when we come to the division of the land, difficulties crowd fast upon us. Since the land is to be divided in proportion to the frontages (not *parts* of frontages) opposite it, since the frontage is absolutely fixed as a right line bounded only by the two terminal boundary points, and since a frontage (not a *part* of a frontage) is said to be opposite the land when a perpendicular from *any* point in it intersects the land it seems to follow that the villages will divide the land in proportion to their *whole* frontage. Now, take the case of *figure* 3, and consider the left bank only. The area of that part of the island R included between the thread of the stream and the bank must first be calculated; and that area must then be divided in the following proportions, the frontages being given in the figure in feet:—

Village.		*Frontage.*			*Share.*
AB.	with	2,000	feet	gets	$\frac{1}{11}$
CD.	,,	4,000	,,	,,	$\frac{2}{11}$
DE.	,,	4,000	,,	,,	$\frac{2}{11}$
FG.	,,	12,000	,,	,,	$\frac{6}{11}$

with the extraordinary result that BC gets none, while AB takes a share; and that EF gets none, while FG, which is more than 2 miles off, gets more than all the other villages put together. No doubt this particular difficulty could be got over, by substituting for the latter half of the explanation the words "that *part* of a frontage is said to be opposite, from *every* point in which a perpendicular erected in the plane of, &c., &c., intersects the island." But this leaves the first difficulty untouched. And when the calculation of areas is complete, it remains to distribute the land between the villages, so as to give each a definite plot of the area to which it is entitled. Here the Bill has deprived us of the ordinary meaning of the word "opposite," and given us no substitute. And even without this disavantage, I confess I see no reasonable method by which it shall be determined *which* $\frac{6}{11}$ FG shall get, and *which* $\frac{1}{11}$ shall be allotted to AB.

A rule proposed.

5. An essential condition of any rule of division that is to be simple and practical is, that it shall not only give the areas, but also define the plots to which the several villages are entitled; in other words, that it shall divide the land, not by *calculation*, but by *construction*. The rule that the dividing lines shall bisect the angles between the frontages, besides being open to some of the objections just discussed, will not work practically, as may be seen from *figure* 5.

The rule that the boundaries shall be produced in the directions in which they run up to the bank, is also impractible, for exactly the same reason; besides making the whole division depend upon the almost accidental relative positions of the ultimate and penultimate boundary pillars on each side. On precisely the same grounds, lines drawn perpendicular to the bank at the ends of the frontages are inadmissible. In fact, the one *absolutely* necessary principle of the rule to be adopted is, that the line to which the perpendiculars from the ends of frontages are perpendicular, and the limiting line which those perpendiculars are to meet (in this case, the thread of the stream), shall be *the same.* In no other way can it be ensured that the perpendiculars will neither diverge at their origin, so leaving land opposite no frontage at all, nor intersect before meeting the defining line; so making some land opposite two distinct frontages at the same time.

The true rule appears to me to be as follows. I would make no distinction between islands lying respectively wholly on one side and partly on each side of the thread of the stream; but would substitute for clauses (*b*) and (*c*) Section 6, the following: " where the island is formed in a river each owner who has a frontage on the river is entitled to all the land included between his bank, the thread of the stream, and the shortest lines that can be drawn riverwards from the extremities of " his frontage to meet the thread of the stream in a direction normal (or perpendicular if preferred as a more commonly understood though less accurate word) to that thread". If thought necessary to provide for a mathematically possible, but extremely unlikely case, it might be added that, where more than one of such lines could be drawn from any extremity, a line bisecting the angles between the two extreme positions of the shortest normal should be substituted. This is practically the rule now in force in the Punjab; and is really only the clear and simple word " opposite " put into technical language. *Figure* 4 shows its operation under exceedingly unfavourable conditions, the thread of the stream having been purposely drawn so as to deprive the village HJ of any claim. But such a case would rarely occur. If it is desired to obviate the possibility of it and obtain a theoretically perfect rule, it will be necessary to lay down that the normals shall be drawn to meet, and in a direction normal to, the thread of the *bed* (which coincides with the thread of the stream taken according to the second optional definition of the latter given in the Bill).

I enclose a piece of a Revenue Survey map showing the operation of this latter rule. It entirely does away with the deep-stream limit, and renders the first and third definitions of the thread of the stream useless. I prefer the rule first suggested.

Division of accretions.

6. It is to be noted that Section 4, dealing with accretion, provides no rule for division of the land deposited in front of two contiguous holdings, though disputes might well arise. I would extend the rule just suggested to this case also. Not only is it the best rule, but adoption of the same rule for both cases would have this great advantage, that, by giving the same direction to the lines dividing alluvion and islands, it would render immaterial the often difficult question whether a new deposit is an island or not. For instance, in *figure* 4, BCD is a channel only a foot deep, and some two or three yards wide; X is a considerable channel. Thus M is indubitably an island; but it may be doubtful whether N is alluvion or an island. Now, if different rules be adopted for the division of alluvion and islands, the " frontage," upon the position of which the division of M will depend, will alter its position according as N is held to be an island or alluvion; whereas, if the same rule be adopted in both cases, no decision as to the nature of N will be needed, as the boundaries would be the same in either case.

Condensed treatment of the subject proposed.

7. In fact, I should infinitely prefer to combine Sections 4, 6 and 8 (excepting the case of an island in the sea or a lake, which would have to be treated separately), and lay down a general rule as follows :—" When any land is newly deposited or exposed by " changes in the flow of a river which are due to natural causes, and the Crown " is not entitled to that land under Section 5, each owner having a frontage on " the river will be entitled to so much of the land as is included between his " bank, the thread of the stream, and the shortest lines, &c., &c., as in my Section 5 above.

" *Explanation* 1.—Land is not *newly* discovered unless it was under water " throughout the dry season immediately preceding.

"*Explanation* 2.—The thread of the stream is, where the river has wholly " abandoned and changed its bed, the thread of the stream during the dry " season immediately previous to the change; and in other cases, the thread " of the stream in the dry season immediately subsequent to the change. The " word *bed* here means the bed occupied by the river in season of flood, and is " not confined to the channel occupied by the water in the dry season.

" *Explanation* 3.—Frontage is as defined in Bill."

The choice of the critical time.

8. And this leads naturally to a question discussed in Council, namely, whether it is advisable to take, as proposed in the Bill, the thread of the stream as it stood "immediately *before* the formation of the island" as the guiding line. I do not think that it would be merely *difficult* to obtain satisfactory evidence as to what was the thread of the stream immediately before the appearance of an island," but that it would be *impossible* to obtain *any* evidence at all worthy of the name. The mere fact that the island appears shows that the stream is changing at the time of the appearance and its thread of course changing with it. And the point to be ascertained usually is the position of the thread *with regard to the island*. Now, till the island appears, no one can connect the two. I am sure no living man could undertake to point out the thread of the Jumna stream just before it deposits an island in this part of its course. Moreover, there is *no* " main stream" in flood time, at the end of which islands mostly appear. And finally, the provision seems to conflict with the first definition of the thread of the stream, which is to be adopted unless specially set aside in favour of one the other definitions by the Local Government, for that definition defines the thread as the middle line *during the dry season*, while the provision in question is based upon the thread just before the island first appears, which is always *in the wet season*.

On the other hand, in the dry season the islands are all formed, the river is stable, and the thread easily ascertained.

Rights of owners of the site.

9. There are important clauses attached to sections 4, 5, 6 and 8 saving the rights of private owners of the site. Who is owner of a site? For instance, an island is formed in the river so as to belong to village A. Next year it is wholly cut away. The third year a new island appears on a site, the stream having meanwhile shifted to the other side of it, so as to completely cut it off from A. Does that new island belong to village A by mere virtue of A's having once owned an island on the site? If so, there are but few sites in the Jumna bed which have not been at various times owned by the villages on each bank in turn as the deep stream changed; and thus there will be at last two owners to every site. But the rule is open to far more serious objections. The Jumna bed here is from half a mile to two miles in width: in the dry season the water may occupy 300 yards of this width; its channels are seldom in the same place two years running; and the thread of the stream, which is usually close under one of the banks, is constantly passing from one side to the other. Now imagine such a river, which, as it subsides, exposes land varying from year to year in all possible positions and in plots of all possible shapes and sizes; the property in which land, when first thrown up on any site, is determined by the position at the time of a line (the thread of a stream) which changes yearly. Now, apply the proposed rule of property in sites. The result of that rule is, that when once any site has been occupied by land, all future land on that site will go to the person to whom the land first thrown upon the site belonged. Thus in a few years after the passing of the Act, we shall have the whole river bed mapped out into sites in which indefeasible property has been acquired, so that the question of property in land subsequently thrown up will depend *solely* upon the site upon which it is formed. Now, these sites will be of the most arbitrary shapes and sizes, will be intermingled in the most confused and inconvenient manner, and will be impossible to identify with any approximation to certainty. The state of things may be pictured by drawing a lot of islands and a thread, and painting them as divided, between the various villages; then another lot of islands (for next year) overlapping and intersecting the first lot, and an entirely new thread, and painting again all not already coloured; repeating the operation till the whole river-bed is painted.

If it is wished to fix property in sites, let us fix our sites on some reasonable plan once for all, and so settle the matter for ever by laying down permanent village boundaries in the bed of the stream. If not, let us leave the property in each piece of new land to be decided by the rules under the special circumstances of each year, without regard to former property in sites.

Saving of internal customs of village communities.

10. I have said that I would not regard custom in laying down the broad principles of division of alluvial land. But I think these broad rules should only extend to the division as between *villages*, and that the internal division of the land between the members of the village community should be scrupulously left to be determined by the customs of the village.

For instance, in many villages of this district, when part of A's land is cut away, he gets a corresponding area given him from the common land of the village; thus, when land is thrown up opposite A's holding on the site from which his land was cut away, that land becomes common property, and A has no special claim to it. The provisions of the definition of "owner" in the Punjab Section (3) are not sufficient: for it might be that the shore or bank was held by A B, and C, members of the community, and not by the community. I would substitute for the end of the 3rd clause of Section 3 something of this sort—

"And in the cases of a bank or shore held by a village community, or by members of such a community, such community jointly: provided that the internal rights of the members of such community as among themselves in land falling under this Act, shall not be affected by anything contained in this Act."

I do not see why the provision should be confined to the Punjab. There are *bhayachara* villages in the North-Western Provinces also.

Verbal alterations proposed.

11. *Section* 3.—To the first definition of the thread of the stream I would add a provision, that, where there are two or more channels of equal importance, the whole bed included between the outermost shores of the channels shall be held to be one main stream, and the land included to be islands in the stream.

The thread would then be the middle line between the outermost shores. The case occurred here some years ago, and gave rise to considerable dispute.

Section 4.—"A private *person* is proved to be the owner." Does the word person include a village community? Why not say—"a site which is proved to belong to a private *owner*," the word owner having been already defined to include a community. So in Sections 5, 6 and 8.

Section 5.—I would substitute for end of the first clause the following words:—"If, during the dry season immediately subsequent to the first formation of the island, the island is separated from *each* bank or shore by a channel not fordable at any point." The definition of fordable can only be tested in the dry season (*see* definition Section 3); and the channel separating the island when first formed from the bank may alter before the dry season allows of its being so tested. Again, the island often lies right under one bank, and yet is separated from it by a deep unfordable channel; while there is hardly any water between it and the opposite bank. In this case it would of course belong, not to the Crown, but to the villages of the opposite bank: or an island may be equidistant from both banks.

Section 6.—So, in the first clause of Section 6 I would say, "if when an island is, &c., &c., all the channels between it and either bank or shore are fordable at any points." But the rule proposed in my Section 7 would supersede this.

Section 7.—I would add after "divides or surrounds" the words "or, by changing its course, cuts off." And it by no means follows that all the land surrounded or cut off would belong to the owner of the old bank; for the river might cut off land two or three holdings deep. Moreover, the land might belong to an individual, while the "owner" might be, under the Bill, a village community. I would provide simply that, if the river cuts off, &c., any land, the property in such land shall not be affected by the change.

Section 8.—I think the word "bed" is indefinite. A river changes its dry season bed almost every year. I would define it for the purposes of this Section as proposed in my Section 7 above, explanation 2.

No. 469, dated Lahore, 3rd February 1879.

From—LEPEL GRIFFIN, Esquire, Secretary to Government, Punjab,
To—The Secretary to the Government of India, Legislative Department.

I HAVE already submitted with my letter No. 320, dated 20th ultimo, the opinions recorded by selected officers on Draft No. II. of the Alluvion Bill, and I am now to forward certain observations on those opinions and on the measure itself as re-drafted.

2. In the first place, with regard to omission, the Lieutenant-Governor notices that in the Statement of Objects and Reasons it is stated that the present Bill "is silent as to 'avulsion'—an event which, though provided for in Bengal Regulation XI. of 1825, is said never to occur in any part of British India." The original draft contained a chapter on "avulsion" stating that "if a river carries away by sudden violence a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part so carried away remains entitled thereto." Paragraph 6 of my letter of the 27th August did not object to the subject of avulsion being treated in the Bill, but only to the language of the section, which the Lieutenant-Governor did not think expressed with sufficient precision the true river action which it was intended to describe. It was stated that what was called avulsion in the draft was ordinarily and, in connection with the action of the rivers in North India, no more than the sudden change of the river-bed. The bank itself was not removed and borne to the opposite side or to another part of the bank, but the river abandoned a certain course and assumed a different one. The first part of the clause in Draft No. I. seemed to have been translated almost literally from the passage in Justinian bearing on the point,* and did not describe correctly a natural phenomenon which so far from "never occurring in any part of British India" is of ordinary and common occurrence in every one of the larger rivers of this Province; and, unless provision be made for what is incorrectly expressed, but commonly understood, by the term "avulsion," His Honor considers that a most serious omission in a law which professes to be complete will occur. The main point to be determined is whether the land, the subject of avulsion, can be recognized or not from objects on its surface which have remained unchanged by the action of the river.

3. The next point to be considered is the definition of "frontage," and on this subject I am to call special attention to the remarks in the paper of Mr. Ibbetson, Settlement Officer. The Draft Bill No. I. gave no definition of frontage, and this was an omission which required to be supplied; but it is also clear that the present definition is impracticable and will, unless modified, lead to great difficulty and confusion.

The rule suggested by Mr. Ibbestson, on page 6 of his paper, appears to His Honor to be a decided improvement upon that in the Draft Bill, and deserves the consideration of the Committee. But it does not appear to be perfect, inasmuch as it does not provide for competing claims; and it is evident that several villages may fulfil the conditions of his proposed rule, *i.e.*, that the shortest line which can be drawn riverwards from the extremities of his frontage to meet the thread of the stream perpendicular to that thread may be the shortest for each owner's estate, or for each village, and may, unless the definition be amended, give rise to anomalies similar to those which he wishes to avoid. It may be intended that that claimant shall be best entitled whose lines are shortest; but it is doubtful whether this would give an equitable result. The matter, however, is one eminently demanding consideration.

4. I am, further, to point out the impossibility of taking as the guiding line, with relation to the proprietorship of islands, the thread of the stream as it existed immediately *before* the formation of the island, this being a fact which, under the circumstances of time and place, cannot be determined; the provision, moreover, conflicting with the first definition of the thread of the stream. This objection does not, however, hold in cases of accretion, applying to the case of islands alone.

* Quod si vis fluminis partem aliquam ex tuo prædio detraxerit et vicini prædio attulerit, &c.
JUST., lib. II., tit. 1, 21.

5. The observations of Mr. Ibbetson, in paragraph 9 of his letter, also would deserve consideration as to the rule of property in sites, the proposed adjustment of the rights of private owners leading to great and inevitable confusion. The Lieutenant-Governor does not consider it practicable to lay down boundaries in the river-bed as has been proposed; and he would, consequently, in this case, leave the questions which may arise to be decided by the rules under the special circumstances of each year.

6. Several officers have shown themselves to be in favour of a survey of the river-bed, and object to the hardship of a rule like that of the deep stream when worked strictly; but, in the opinion of the Lieutenant-Governor, there are great practicable difficulties in making a survey and in using the survey data with our unscientific agency. Moreover, disputes cannot wait until these surveys are made. There seems, also, danger that the right of the public to the use of the rivers may be impaired if the river-beds are all mapped and assigned to villages. The Lieutenant-Governor does not see any way which would give results altogether satisfactory. The action of each river differs, and the customs of riparian proprietors are different. For this reason he would uphold custom; and in the same way, although it may be admitted that the "Hadd Sikandari" rule may operate harshly if individual cases which now occur are alone considered, yet it is impossible to judge of the hardship in this way. We come at the end of a series of such cases. The rule has been in force from immemorial time, and the gain and loss must be reckoned upon the whole series and not upon the cases which now occur. And the Lieutenant-Governor thinks that it is on the whole better to uphold custom than to change it. Our surveys and records should aim at giving accurate facts on which to decide according to custom. It is not possible to deal with the rivers and their beds in India as if we were taking possession of a country newly colonized, in which case it would be no doubt the best plan to give to each village a specified area, reserving the river-bed to Government together with all new accretions beyond assigned areas.

7. The Lieutenant-Governor would, further, substitute for the end of the 3rd clause of Section 3 the amendment proposed in paragraph 10 of Mr. Ibbetson's paper, together with the provision proposed in the first clause of his paragraph 11 as an amendment to the first definition of the thread of the stream, provided that the previous definition of the time when the thread of the stream is to be determined be adopted.

8. The opinion of Mr. J. B. Lyall, Financial Commissioner, received subsequent to the despatch of my letter above quoted, is annexed.

No. 633, dated Lahore, 18th February 1879.

From—Lepel Griffin, Esquire, Secretary to Government, Punjab,

To—The Secretary to the Government of India, Legislative Department.

In continuation of my letter No. 469, dated 3rd instant, conveying the remarks of this Government on draft No. II of the Alluvion Bill, I am directed to forward the accompanying printed copy of a letter from Mr. Ibbetson, which further explains the suggestions made by him in the 5th paragraph of his memorandum, with regard to the new rule as to division of land opposite village frontages.

2. The present definition is, in the Lieutenant-Governor's opinion, accurate, and one which it would be well to adopt. But it seems to require graphic illustration, or it may not be readily understood by the uneducated persons who will have to work it.

Demi-official letter, dated Camp Sutana, (Karnál District), 4th February 1879.

From—D. J. Ibbetson, Esquire,

To—The Secretary to Government, Punjab.

Your letter about my rule for dividing alluvial deposits has just reached me. I am not quite sure that I rightly understand your difficulty. But if I do, I fancy that you have overlooked the fact that, to a *curved* line, such as the thread of a stream, *several* normals may be drawn from the *same* point. It is to decide which one of these shall be taken, and not to discriminate between normals from *different* points, that the word "shortest" is introduced.

Suppose the word omitted. The rule would thus stand; "Each owner who has a frontage on the river is entitled to all the land included between his bank, the thread of the stream, and the lines drawn riverwards from the extremities of his frontage to meet the thread of the stream in a direction normal to that thread." That is clear enough; and no conflicting claim could possibly arise, supposing *only one* normal to be possible from each extremity of a frontage.

But at A, *two* normals can be drawn; and it is necessary to decide between them. I therefore provide that of several normals from the *same point*, the shortest shall always be taken. Again, it is quite possible (though I doubt if the case would occur in practice save very rarely) that two or more normals from the same point should be equal, and none be shorter than them. Thus, if A be the extremity of a frontage, and a circle be described round A as a centre, *all* lines drawn from A to the circumference will be normal to the curve, and of equal length. Consequently, if the thread of the stream touch the circle at more than one point, and yet never come within the circle, *all* lines drawn from A to the points of contact, as P1, P2, P3, P4, &c., &c., will be the shortest possible normals from A. This can be met by providing that, if more than one line fulfil the condition, the line bisecting the angle between the extreme positions of the shorest normal shall be substituted.

Thus—

Three normals can be drawn from A, *viz.*, A M, A O, A P.

A P is excluded because it is not the shortest. But A M and A O are equal in length, and there is no shorter. Accordingly A N, the line bisecting the angle M A O, is substituted for the normal.

But the mere fact that you did not understand my rule is sufficient proof that it is not clear, and needs alteration. I would, therefore, substitute the following:—

"Each owner who has a frontage on the river is entitled to all the land included between his bank, the thread of the stream, and the lines drawn riverwards from the extremities of his frontage to meet the thread of the stream in a direction normal to that thread.

"Where more than one such normal can be drawn from one and the same extremity of any frontage, the shortest of such normals shall be taken as the boundary line; and where two or more of such normals, being of equal length, fulfil this condition, the line bisecting the angle between the two extreme positions of the shortest normal shall be the boundary line."

I am not quite sure that I have accurately conceived your difficulty. If not, I should be obliged if you would allow me another opportunity of explanation. No conflict of claims between villages or owners of separate frontages can possibly take place under my rule, because only *one* boundary line is drawn from each point, and it is impossible that any two lines from two separate points should ever intersect before meeting the thread of the stream.

Please excuse verbosity. I am anxious to be fully understood. I do not propose to compare normals drawn from *different* frontage extremities to see whether any be longer or shorter than another. A normal drawn from each such point will be the boundary line from that point, however long or short it may be. The only case in which comparison of lengths will be made, is where more than one normal can be drawn from *one and the same point;* and such normals will then be compared with each other, and all but the shortest excluded, the shortest being taken as the boundary line. Where the shortest normal has more than one position, its *mean* position (*e.g.*, the line bisecting the angle between its *extreme* positions) will be taken as the boundary line.

No. 587, dated 3rd May 1879.

From LEPEL GRIFFIN, Esquire, Secretary to Government, Punjab,

To the Secretary to Financial Commissioner, Punjab,

I AM desired to forward herewith, for the favor of the opinion of the Financial Commissioner a copy of a Bill to define and amend the law relating to alluvion islands and abandoned river-beds.

2. Your reply should reach this office not later than the 5th of May next.

No. II.

A

BILL

TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

Preamble.

WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows :—

I.—Preliminary.

Short title.

1. This Act may be called "The India Alluvion Act, 1879."

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactment.

2. The Acts, Regulation and Rules mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause.

3. In this Act—

"island" means land surrounded by water and capable of being employed for cultivation, pasture or other useful purpose. It includes such land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea, submerged by the flow of ordinary tides throughout the year :

"owner" means, in the case of a bank or shore held on raiyatwari tenure, the Government : in the case of a bank or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder of such land; and in the case of a bank or shore held by a village-community, or by one or more members of it, such community :

"sea" includes bay, inlet, creek and arm of the sea :

"frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river :

"Thread of the stream" means (*a*) the middle line of the main-stream during the dry season, or, where there are two streams of equal depth and width, the line equidistant during such season from the outermost shores of the two streams; (*b*) the middle line of the river between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought; or (*c*) the middle line of the particular channel in which the formation or ancient river-bed referred to occurs or is situate ;

and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season next after the formation referred to and throughout the twenty-four hours.

II.—Alluvial Land and Islands.

Right to land formed on shore of sea or lake.

4. Where, from natural causes, land forms gradually on the shore of the sea or of a lake, either by accumulation of material or by recession of the sea or lake, the owners of the shore are severally entitled to the land so formed in proportion to the frontage which they respectively had on the sea or lake immediately before the formation; and the partition of the land so formed shall be made by such officer as the Local Government appoints in this behalf, and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe :

Provided that, where the land or any portion thereof forms on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, if the island is separated from each bank or shore by a channel not fordable at any point, the Government is entitled to such island :

Right to islands where channel is not fordable.

Provided that, where the island or any portion thereof is formed on a site which is proved to belong to a private owner, such owner is entitled to the island or portion so formed.

6. If, where an island is formed as aforesaid in the sea or a lake, the channels between it and either shore are fordable at any point, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake ; and the partition of the island so formed shall be made by such officer as the Local Government appoints in this behalf and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe.

Right to other islands in sea or lake.

7. Where, from natural causes, an island or other land is formed in, or on the bank of, a river, either by accumulation of material or by recession of the river, and the Government is not entitled thereto under section five, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream during the dry season next after the formation and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread :

Right to land formed in, or on bank of, river.

Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line, and where more than one such normal can be so drawn and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line.

Provided that, where the land or any portion thereof is formed on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

8. If a river freshly divides and surrounds, or, by changing its course, cuts off, lands belonging to the owner of the bank, such owner is entitled to the lands so surrounded or cut off.

Ilsands formed by division of rivers.

III.—Abandoned River-beds.

9. Where a river suddenly abandons the bed which it occupies during the season of flood, each owner having a frontage on such bed is entitled to so much of the bed as is included by his frontage, the thread of the stream during the dry season next before the abandonment and lines drawn towards the bed from the ends of such frontage to meet such thread in a direction normal thereto.

Right to abandoned river-beds.

Where more than one such normal can be drawn from one and the same end of any frontage, the rules contained in the second paragraph of section seven shall apply :

Provided that, when the ancient bed is proved to have belonged immediately before the abandonment to the Government or a private owner, it shall continue to be the property of the Government or of such owner, as the case may be.

IV.—Miscellaneous.

Power to declare "main stream," "dry season" and "thread of the stream."

10. The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

(*a*) what shall be deemed to be, for the purpose of this Act, the "main stream" and the "dry season"; and

(b) which of the said definitions of "thread of the stream" shall be deemed to be in force.

The Local Government may also declare, with reference to any tidal river, where, for the purposes of this Act, the river shall be deemed to end and the sea to begin.

Every declaration made under this section, and all rules made under section four or section six, shall be published in the official Gazette, and shall thereupon have the force of law. And no such declaration shall be cancelled or altered save with the previous sanction of the Governor-General in Council.

In the absence of a declaration made under clause (b) as to any river or part thereof, and having the force of law, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

Savings.

11. Nothing herein contained shall—

(a) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(b) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island or to an abandoned river-bed, any title to such land, island or river-bed, better than that which he has to the bank or shore; or

(c) enlarge any holding granted by Government, the area of which has been fixed any sanad or other document executed under the authority of Government; or

(d) authorize any acts of private persons done in order to divert currents or cause accretions; or

(e) authorize any encroachments by private persons on the banks, beds or channels of navigable rivers; or

(f) prevent any officer duly empowered by the Local Government in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(g) prevent any officer duly empowered by the Local Government in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

Local usage in Punjab.

12. In the territories administered by the Lieutenant-Governor of the Punjab, nothing herein contained shall affect any definite and well-established local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Punjab Land-Revenue Act, 1871, section 16,) the burden of proving such usage shall lie on the person alleging it:

Provided that the Local Government may from time to time (a) cause the bed of any river or part of a river, together with the islands and alluvial lands situate therein or adjacent thereto, to be surveyed and mapped, (b) appoint an officer to enquire into, determine and record the rights of private persons and the Government, in, to or over the said bed, islands and lands, and (c) declare that rights so recorded shall not be affected by any local usage. And the provisions of the Punjab Land Revenue Act, 1871, chapter II, shall apply, so far as may be, to proceedings under this section, and the determination of the said rights shall be made after consideration of the gain and loss (if any) caused by changes in the course of the river for a period of twelve years next before the date of the survey-notification.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

13. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four, five and nine and not vesting under any of the provisions hereinbefore contained shall vest in the Government.

THE SCHEDULE.

(*a*). Acts of the Governor-General in Council.

Number and year.	Subject.	Extent of repeal.
IV of 1872 ...	Punjab Laws Act ...	So much as relates to Bengal Regulation XI of 1825.
XX of 1875 ...	Central Provinces Laws Act...	Ditto.
XVIII of 1876 ...	Oudh Laws Act ...	Ditto.

(*b*). Bengal Regulation.

Number and year.	Subject.	Extent of repeal.
XI of 1825 ...	Alluvion ...	The whole.

(*c*). Bengal Act.

Number and year.	Subject.	Extent of repeal.
IV of 1868 ...	Amending Act IX of 1847 ...	Sections 2 and 4.

(*d*). Rules.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

LEGISLATIVE DEPARTMENT.

From the Hon'ble H. S. Cunningham, dated 7th October 1878 (Paper No. 1).
,, B. H. Baden-Powell, Esq., to Hon'ble T. H. Thornton, dated 26th October 1878 (Paper No. 2).
,, Secretary to Government, North-Western Provinces and Oudh, No. 3193 A., dated 23rd October 1878, and enclosures (Paper No. 3).
,, Officiating Collector, Dháká, No. 835, dated 12th October 1878 (Paper No. 4).
,, Chief Commissioner Ajmér and Merwára, No. 795, dated 20th November 1878 (Paper No. 5).
,, Secretary to Chief Commissioner, Mysore, No. 6653J-12, dated 18th November, 1878 (Paper No. 6).
,, Secretary to Government, North-Western Provinces and Oudh, No. 3475A., dated 29th November, 1878, and enclosures (Papers No. 7).
,, Secretary for Birár to Resident, Haidarábád, No. 11 B., dated 13th December 1878 (Paper No. 8).
,, Assistant Secretary, British Indian Association, dated 19th December 1878, and enclosure (Paper No. 9).
,, Assistant Secretary to Chief Commissioner, British Burma, No. 2582-245, dated 21st December 1878, and enclosures (Papers No. 10.)
,, J. G. W. Sykes, Esq , Advocate, High Court North-Western Provinces, dated 22nd October 1878 (Paper No. 11.)
,, Secretary to Government, Bengal, No. 55, dated 7th January 1879, and enclosures (Papers No. 12).
,, Secretary to Government, Punjab, No. 320. dated 20th January 1879, and enclosures (Papers No. 13).
,, Assistant Secretary to Chief Commissioner, Central Provinces, No. 399-15, dated 23rd January 1879, and enclosures (Papers No. 14).
,, Secretary to Chief Commissioner, Assam, No. 104T., dated 27th January 1879, and enclosures (Papers No. 15.)
,, Rájá Harbalab Náráyana Singh, dated 10th January 1879, (Papers No. 16).
,, Secretary to Government, North-Western Provinces and Oudh, No. 267, dated 4th February 1879, and enclosures (Papers No. 17).
,, Secretary to Government, Punjab, No. 469, dated 3rd February, 1879, and enclosures (Papers No. 18).
,, ditto ditto No. 633, dated 18th February 1879, and enclosures (Papers No. 19).
Despatch from Secretary of State for India, No. 3, dated 6th February 1879, and enclosures (Paper No. 20).
From Registrar, High Court, Calcutta, No. 400, dated 10th March 1879, (Paper No. 21).

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds was referred, have the honour to report, that we have considered the Bill and the papers noted in the margin.

2. The Bill as introduced proposed that the division of the whole area of an island formed opposite several holdings should be made rateably among the owners in proportion to their respective frontages, and was framed so as merely to indicate those holders. If, for example, there were three such owners, A, B and C, whose respective frontages were 100 yards, 200 yards and 300 yards, it was intended that A should take one-sixth of the whole area of the island, B one-third and C one-half, and this division was to have been effected either by private arrangement or, in default thereof, by a suit for partition. It has, however, been strongly urged that, to preclude litigation and discrepancy of practice, the Bill should, at least in the case of land forming in rivers, contain rules, not only for giving the areas, but for defining the plots, to which the several riparian owners are entitled. For this purpose rules have been suggested both by the Board of Revenue of the Lower Provinces and the High Court at Fort William, the former proposing that the alluvion should be divided by right lines perpendicular to the extremities of the frontages, the latter proposing a division by right lines bisecting the angles made by perpendiculars drawn from the extremities of adjacent frontages. But it will be seen on examination that, under either of these plans, alluvial lands formed in the bend of a river would sometimes fall to more than one estate, and further provision would then be required for a rateable division of those lands between the owners of the estates concerned. The subject is one of no small difficulty: but it seems to us that the following rule, which is said by a distinguished Settlement-officer (Mr. Ibbetson) to be practically the rule now in force in the Punjab, and which is recommended for adoption by the Government of that Province, solves the problem satisfactorily and completely:

"Where from natural causes an island or other land is formed in or on the bank of a river, either by accumulation of material or by recession of the river, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread.

[The term "normal," we may observe, is here used instead of "perpendicular," as the thread of the stream may be a curve. It is obvious that in such case several normals may possibly be drawn from the same point, and that these normals may be either of different or of the same length. The rule, therefore, proceeds as follows:—]

"Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line; and where more than one such normal can be so drawn, and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line."

It will be seen that the above rule applies not only to alluvion deposited on the banks of two contiguous holdings, but also to islands. Incidentally, this will have the effect of rendering immaterial the often difficult question whether a new deposit is an island or not.

3. The above is the chief substantial alteration which we have made in the Bill. We now proceed to specify the minor changes which we deem desirable.

4. In the tidal portion of rivers, like the Hugli, are many islands which are flooded by ordinary tides in the rainy season, but only by extraordinary springs, or not at all, in the dry season. These chars are cultivable in the dry season, and should be included in the definition of "island." We have therefore added to that definition the words "throughout the year."

5. To fix with more precision the time at which, for the purposes of the Bill, an alluvial island is first formed, we have provided that it must be capable of being employed for cultivation, pasture or other useful purpose, such, for example, as the supply of reeds or brushwood. The question of fordability will thus be decided after an island newly formed becomes, as the Privy Council puts it, "valuable and usable."

6. Where any formation takes place on a site of which the Government is proved to be the owner, we have declared that the Government is entitled to such formation.

7. In the case of land formed on the shore of the sea or of a lake and in that of an island formed in the sea or a lake, we have provided that the distribution in proportion to the frontage of the riparian owners shall be effected by such officer as the Local Government may appoint and in accordance with such rules (consistent with the proposed Act) as the Local Government may from time to time prescribe.

8. We think that, to entitle the Crown to alluvial islands, the channel between the island and each bank or shore should not be fordable during the dry season next after the formation.

9. In determining the right to abandoned river-beds, we think we should have regard to the thread of the stream in the preceding dry season, and not to what it was immediately before the abandonment—a matter which cannot be always ascertained. In other respects, the rule for the division of such beds among the riparian owners will be the same as that which we have provided in the case of alluvial lands.

10. We have empowered the Local Government to declare, with reference to any tidal river, where, for the purposes of the proposed Act, the river shall be deemed to end and the sea to begin; and we have provided that no declaration under the Act shall be cancelled or altered, save with the previous sanction of the Governor-General in Council.

11. In the Punjab the ownership of lands subject to the action of rivers is mainly regulated by local usage. We have accordingly retained the section of the Bill as introduced, which provided that such usages should be respected, and in certain cases, presumed to be in force. But such provisions do not appear to be required in Madras, Bombay, Oudh or the North-Western Provinces, and though local usage is saved in the Lower Provinces and Assam by the Bengal Regulation XI of 1825, there seems to be only one instance in which there has been any attempt to establish it. We have, therefore, confined to the Punjab the section saving usage. But there is ground for the belief that even in that Province some of the local usages referred to,—including the usage known as "the deep-stream rule"—besides being objectionable on economic grounds and adverse to imperial interests are more or less unsuited to the time and distasteful to the communities affected by them. In these circumstances we have deemed it right, on the recommendation of experienced

officers, to provide a procedure whereby such usages may, if thought expedient, be discontinued, and fixed boundaries substituted for varying boundaries in riparian estates.

12. As the rights of mortgagees and tenants to alluvial lands are saved by the transfer of property Bill, No. III, sections 37 and 65, clause (*e*), we have not thought it necessary to provide for such rights.

13. The Bill in its present form is not to be taken as expressing our final views as to all the difficult and important subjects with which it deals. But we think that the changes which it has undergone are such as to render republication desirable, for the purpose of eliciting criticism from the public and from the judicial and executive officers by whom its provisions will be carried into effect. We also think that its further consideration should be stayed until the new Law Commission has reported thereon. We therefore recommend that the Bill as now amended be republished with this Report in the *Gazette of India*, and sent to the Local Governments for opinion and for publication in the local Gazettes.

14. The Bill and Statement of Objects and Reasons have been published in English in the local Gazettes for Madras, Bengal, the North-Western Provinces and Oudh, the Punjab, the Central Provinces and British Burma. Publication in English has not been reported from Bombay and Assam. Publication in the Vernacular has been reported only from Madras, Bengal, the North-Western Provinces and Oudh, the Punjab and the Central Provinces.

WHITLEY STOKES.
RIVERS THOMPSON.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

CALCUTTA:
The 19th March 1879.

No. 575—3374, dated 7th May 1879.

From—Secretary to Financial Commissioner, Punjab,
To—Secretary to Government, Punjab.

WITH reference to your letter No. 587 of 3rd May, calling for the opinion of the Financial Commissioner on the Revised Draft Bill to amend the Law relating to alluvion, islands and abandoned river-beds, I am directed to say that it was impossible for the Financial Commissioner to submit his opinion on the date therein named, the 5th May, as the letter only reached him on that date.

2. At such short notice Mr. Lyall is unable to consider the entire Bill, and has confined his attention to section 12, on which he has recorded the accompanying memorandum.

Memorandum by J. B. Lyall, Esq., Financial Commissioner Punjab.

I AM in doubt whether the word "determine" in clause (*b*) when read with the last sentence of clause (*c*) will give the officer appointed the power required to effect the desired reform in a satisfactory way. Would the word "determine" give the officer a power of abolishing, as between two estates, the existing rule of custom and rights dependent thereon, and of allotting the land between the two estates, or the right to land which may hereafter form on sites now in the river-bed, between them to one or two other estates by a kind of arbitration. This is the sort of power which is required, and I am not sure that the word "determine" would convey it.

2. If it would, I still think it would not be possible to allot the land fairly if the law limits the grounds of the adjudication to the basis of the average area held during a period of 12 years. If a term is to be fixed, I think it should be, say, 30 years which is one generation.

I imagined that the short term of 12 years has been fixed because it is thought that it would not be fair to disturb possession of older date, but in point of fact it would be rarely if ever necessary to disturb actual possession. The contingent right to land forming on sites, which, after time of arbitration might be under water or mere barren sandbank, would form a fund from which the arbitrating officer could in almost every case make a sufficient allotment to the village which had lost most in the past 30 years. In substituting fixed boundaries for moving boundaries in this way, it would be hardly ever, perhaps

never, necessary to transfer to one estate or person cultivated land in the possession of another, and it would be seldom necessary to transfer culturable waste which had been in possession of one to the other.

3. I think, therefore, that the term within which loss and gain should be open to consideration should be 30 years, but a proviso might be added, if thought advisable, to the effect that in the allotments to be made, cultivated land should not be transferred from one to another if it has been cultivated by one party for more than three years, and that similarly culturable waste should not be transferred if it has been in possession of one party for more than 12 years.

No. 373, dated Fort William, the 18th March 1881.

From—D. Fitzpatrick, Esquire, Secretary to the Government of India, Legislative Department,

To—The Secretary to Government, Punjab.

Bill (No. III.) to define and amend the law relating to alluvion, islands and abandoned river-beds.

Further Report of the Select Committee on the above Bill.

I am directed to forward herewith 15 copies of the papers noted on the margin, and to request that His Honor the Lieutenant-Governor will favor the Government of India with an expression of his opinion on the provisions of the Bill, and with the opinions of the learned Judges of the Chief Court and of such selected officers as His Honor may think fit to consult on the subject.

2. I am also to request that the Bill and further report be published in the *Punjab Government Gazette* in English, and in accordance with the orders contained in the despatch * of the Secretary of State, No. 37, dated 7th October last, be translated into and published in the vernaculars, and that the dates of such publication be communicated in your reply.

* *See* Supplement to the *Gazette of India*, January 22nd, 1881, P. S.

The publisher of the *Gazette of India* at Calcutta has been instructed to furnish the Publisher of the *Punjab Government Gazette* with English copies of the Bill and further Report (in Gazette form) for publication in the latter Gazette.

3. The reply to this letter should be sent in by the 1st August 1881.

No. III.
BILL
TO

Define and amend the law relating to alluvion, islands and abandoned river-beds.

Preamble.

Whereas it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Alluvion Act, 1882:"

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force on the *first* day of *March*, 1882.

Repeal of enactments.

2. The Acts, Regulation and Rules mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause.

3. In this Act—

"island" means land surrounded by water and capable of being employed for cultivation, pasture or other useful purpose. It includes such land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea, submerged by the flow of ordinary tides throughout the year:

"frontage" used with reference to a holding means the line or lines determined for such holding in the manner prescribed in the second schedule hereto annexed:

"and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season next after the formation referred to and throughout the twenty-four hours.

II.—*Alluvial Land and Abandoned River-beds.*

Right to alluvial land formed on bank or shore.

4. Where from natural causes land is formed, by imperceptible degrees, on the bank or shore of a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, the owner of the bank or shore is entitled to the land so formed.

When the formation takes place at the junction of two holdings, each owner shall be entitled to so much of the formation as lies on his side of a line drawn through the point of junction and bisecting the angle between the two frontages at that point.

Right to islands where neither channel is fordable.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, if the island is separated from each bank or shore by a channel not fordable at any point, the Government is entitled to such island.

Islands where one or both channels fordable.

6. Where an island is formed from natural causes in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, and is separated from the bank or banks by a fordable channel or fordable channels:

Land formed by perceptible degrees.

and where from natural causes any land is formed, otherwise than by imperceptible degrees, on the bank of a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake,

and where a river suddenly abandons its bed, each particle of the island or land so formed, or the river-bed so abandoned, shall belong to that one of the riparian owners who can show a point on the frontage of his holding nearest to such particle:

Provided that when the channel separating an island so formed in a river from one bank is fordable and the channel separating such island from the other bank is not fordable, the owners of the former bank shall alone be entitled as such to the island:

Provided also that when the line dividing the formation to which one owner is entitled under this section from the formation to which another owner is entitled under this section is an arc of a curve, the chord of such arc shall be substituted therefor.

III.—*Miscellaneous.*

Power to declare where tidal rivers end.

7. The Local Government may, from time to time, declare, with reference to any tidal river, where, for the purposes of this Act, the river shall be deemed to end and the sea to begin.

Every declaration made under this section shall be published in the official Gazette, and shall thereupon have the force of law. And no such declaration shall be cancelled or altered save with the previous sanction of the Governor-General in Council.

Savings.

8. Nothing herein contained shall—

(*a*) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island, or to an abandoned river-bed, any title to such land, island or river-bed, better than that which he has to the bank or shore; or

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

(*e*) authorize any encroachments by private persons on the banks, beds or channels of navigable rivers; or

(*f*) prevent any officer duly empowered by the Local Government in this behalf from removing obstacles which appear to him to interfere with

the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise ; or

(*g*) prevent any officer duly empowered by the Local Government in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters ;

(*h*) affect the right of the Government or a private owner—

to land formed on a site which is proved to belong to the Government or such owner, or

to the ancient bed of a river which is proved to have belonged to the Government or such owner immediately before its abandonment.

Local usage saved.

9. Nothing herein contained shall affect any definite and well-established local usage respecting the right to alluvial land, islands or abandoned river-beds ; but (except in the cases provided for by the Panjab Land-Revenue Act, 1871, section 16,) the burden of proving such usage shall lie on the person alleging it.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

10. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four and five, and not vesting under any of the provisions hereinbefore contained, shall vest in the Government.

THE FIRST SCHEDULE.

(*a*).—Acts of the Governor-General in Council.

Number and year.	Subject.	Extent of repeal.
IV of 1872 ...	Punjab Laws Act	So much as relates to Bengal Regulation XI of 1825.
XX of 1875 ...	Central Provinces Laws Act	Ditto.
XVIII of 1876 ...	Oudh Laws Act	Ditto.

(*b*). Bengal Regulation.

Number and year.	Subject.	Extent of repeal.
XI of 1825 ...	Alluvion	The whole.

(*c*). Bengal Act.

Number and year.	Subject.	Extent of repeal.
IV of 1868 ...	Amending Act IX of 1847	Sections 2 and 4.

(*d*). Rules.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh	Paragraphs 1, 2, 3, 4, 5 and 20.

THE SECOND SCHEDULE.

Rules for determining the frontage of a holding.

Draw a right line connecting the extreme points of the riparian boundary of the holding, and take that as the frontage except—

(*a*) where such line or any portion of it lies altogether outside the riparian boundary of the holding, and any point on such line or portion, measuring along a perpendicular to it erected at such point, is further from such boundary than from the riparian boundary of any other holding ; or

(*b*) where such line or any portion of it lies altogether within the riparian boundary of the holding, and there is any point on the portion of such boundary cut off by it so situated that right lines drawn from it to the extremities of such line or portion, as the case may be, contain an angle of less than 160°,

in either of which cases the line or portion of the line, as the case may be, must be rejected, and other lines substituted for it as follows :—

2. When the line or any portion of it is rejected on the ground mentioned in paragraph (*a*), the lines to be substituted for it are to be determined as follows :—

Erect a perpendicular to it at its middle point: connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that there is a point on either of them which, measuring along the perpendicular to it erected at such point, is further from the riparian boundary of the holding than from the riparian boundary of any other holding, in which case that line must be rejected, a perpendicular to it erected at its middle point, and right lines drawn from its extremities to the point where that perpendicular intersects the riparian boundary of the holding, and so on, repeating the process, until such a series of right lines is obtained that no point on any one of them, measuring along the perpendicular erected to it at such point, will be further from the riparian boundary of the holding than from the riparian boundary of any other holding.

3. Where any line or portion of a line is rejected on the ground stated in paragraph (*b*), the lines to be substituted for it are to be determined as follows :—

Erect a perpendicular to it at its middle point; connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that right lines drawn from the extremities of either of them to any point on the portion of the boundary cut off by it contain an angle of less than 160°, in which case that connecting line must be rejected, a perpendicular erected at its middle point, its extremities connected with the point where such perpendicular intersects the boundary, and so on, repeating the process, until such a series of right lines is obtained that the right lines connecting the extremities of any one of them with any point on the portion of the boundary cut off by it will, in no case, be less than 160°.

LEGISLATIVE DEPARTMENT.

We, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds was referred, have the honour to report that we have considered the Bill and the papers noted in the margin, together with the part of the report of the late Indian Law Commission which deals with the Bill as settled in March, 1879.

2. We have carefully considered the alternative drafts proposed by Sir C. Turner and Mr.

From Chief Secretary to Government, Bombay, No. 1635, dated 25th March 1879 [Paper No. 22].
,, J. W. Best, Esq., District and Sessions Judge, South Kanára, No. 8, dated 3rd April 1879 [Paper No. 23].
,, Officiating Secretary to Chief Commissioner, Mysore, No. 751—11, dated 26th April 1879 [Paper No. 24].
,, Secretary for Birár to Resident, Haidarábád, No. 6, dated 5th May 1879 [Paper No. 25].
,, Secretary to Chief Commissioner, Assam, No. 755, dated 2nd May 1879 [Paper No. 26].
,, Acting Chief Secretary to Government, Bombay, No. 2629, dated 19th May 1879 [Paper No. 27].
,, Chief Commissioner, Ajmer and Merwára, No. 388, dated 21st May 1879, and enclosure [Papers No. 28].
,, Assistant Secretary to Chief Commissioner, Central Provinces, No. 2222—113, dated 19th May 1879 [Paper No. 29].
Translation of Memorial from Dabí Pershád and others, zamíndárs, Raipur, No. 8, dated 3rd May 1879 [Paper No. 30].
From Under-Secretary to Government, Bengal, No. 1234—516 LR, dated 27th May 1879, and enclosure [Papers No. 31].
,, Secretary to Government, Punjab, No. 160C, dated 19th June 1879, and enclosures [Papers No. 32].
,, Acting Chief Secretary to Government, Madras, No. 1322, dated 6th June 1879, and enclosures [Papers No. 33].
,, Certain inhabitants of Elas, Broach District, dated 15th June 1879, [Paper No. 34].
,, Acting Chief Secretary to Government, Madras, No. 1387, dated 13th June 1879, and enclos[illegible] [Papers No. 35].
,, Acting Chief Secretary to Government, Madras, No. 1401, dated 16th June 1879, and enclosures [Papers No. 36].
,, Acting Chief Secretary to Government, Madras, No. 1508, dated (26th June 1879, and enclosures [Papers No. 37].
,, Officiating Secretary to Chief Commissioner, British Burma, No. 310, dated 10th July 1879 [Paper No. 34].
,, Secretary to Government, North-Western Provinces and Oudh, No. 1709, dated 4th August 1879, and enclosures [Papers No. 39].
Note by D. Fitzpatrick, Esq., Secretary to the Government of India, Legislative Department, dated 22nd January 1881, and enclosures [Papers No. 40].

Justice West, but we cannot recommend either of them for adoption. Sir C. Turner's has the advantage of simplifying the measure in certain respects, but this advantage is gained by leaving it to the Courts to decide questions of great importance and difficulty at their mere discretion and without any rules to guide them.

3. We think that the Bill submitted to the Law Commission will answer its purposes, subject only to two alterations in substance, namely, the substitution of one simple rule for the several rules originally proposed for determining the manner in which newly formed land, to which it is admitted the riparian owners are entitled, should be distributed among them, and a modification of the definition of frontage.

4. As regards the former, it seems to us that the rules laid down by the Bill as last settled for deciding disputes between competing riparian owners and dividing the new land between them would be likely to give rise to difficulties in practice.

These rules are different for rivers on the one hand, and the sea and lakes on the other; and again, for islands, for land formed on the bank and for abandoned river-beds. These distinctions not only make the law more complicated, but, further, may give rise to questions for the solution of which that Bill does not altogether provide. Again, in some instances (sections 4 and 6), they merely postpone the evil day by leaving important difficulties to be disposed of by rules to be made hereafter by the Local Governments. Further, they greatly complicate the question by making its solution depend on the "thread of the stream," a line or combination of lines which it would often be hard to determine, and which might, when determined, turn out to be of a very irregular shape; and, as regards the particular matter of the normals to be drawn under sections 7 and 9, it appears that cases would sometimes present themselves in practice in which no such normals could be drawn.

5. To avoid these difficulties we propose to substitute for the original provisions of the Bill on this point, two rules which will cover all cases in which two or more riparian owners may be conceived to have claims to a new formation. The first of these rules is intended to apply to all cases in which new land is formed on a bank by imperceptible increments; the second to all other formations to which riparian owners may have a claim.

6. The former class of cases appears to us to be simple enough. We conceive that, when land is formed by imperceptible degrees on a portion of the bank belonging to a single proprietor, he should take that land in whatever direction and to whatever extent it may grow. It is only when the formation, or any portion of it, springs from a nucleus at the point of junction of two frontages that any question can arise, and we have (section 4) provided that in this case the dividing line shall be the bisector of the angle between the two frontages.

7. The cases to be dealt with by the second rule, on the contrary, may present every variety of complication, but we think they may be provided for by a rule which is capable of being simply expressed, which would generally be easy to apply, and about the application of which there would never be any serious difficulty, and which, moreover, would make as fair a division of the new land as can be hoped for in a class of cases for which, in the absence of anything in the way of a definite principle to guide us, we must be content with a somewhat rough-and-ready rule.

The rule we propose (section 6) is that each particle of the new formation shall belong to that one of the riparian owners who can show a point in his frontage nearest to it; provided that, when the line dividing the portion of the land to which one owner is entitled from the portion to which another is entitled is an arc of a curve, the chord of such arc shall be substituted for the arc. The dividing line given by this rule will be different according to the relative positions of the two competing frontages, but it will be one which it will be always easy to draw.

In ordinary cases it will be the bisector of the angle between the frontages, or in the case of holdings on opposite sides of a river with parallel frontages, a line parallel to the frontages and equidistant from both; in others it will be the perpendicular erected at the middle point of the line connecting the extremities

of the frontages; and in others, again, it will be the chord of a parabola. As this last line might at first sight be supposed to present some difficulty, we think it well to explain that the chord can be drawn without describing the parabola, and by a person altogether ignorant of the nature and properties of that curve. It is, in fact, simply the right line connecting two points which could be fixed by any patwári or amín without the slightest difficulty. We may add, as regards the substitution of the chord for the arc in this case, that it not only simplifies the problem, but also makes what we believe, would, by most persons be considered a fairer division of the land.

8. Coming now to the definition of "frontage," it has been pointed out to us by Mr. Elliot that the original definition would, under the Bill as last settled, sometimes lead to anomalous results, as, for example, when a riparian holding extended completely round the concave face of a sharp curve in a river, in which case the frontage might approach within a few yards of the opposite bank or even cut off a considerable portion of it. These anomalies would be increased rather than diminished under the new rule for the division of the land now adopted, and we have accordingly been compelled to seek for a new definition.

The object of introducing the "frontage" is to substitute right lines for the irregularly shaped bank of the river, and thus to simplify the application of our rules: the defect of the original definition is that, in requiring a single right line to be substituted for the entire riparian boundary of each holding, the artificial riparian boundaries thus obtained in some cases deviate too widely from the real boundaries; and the remedy appears to be to declare that in such cases, instead of the single line, a series of two, or, if necessary, more, lines following more closely the real line of the bank shall be adopted. For this we have attempted to provide in the directions given in schedule II for drawing a frontage.

9. We have struck out the definition of "owner," as we think that the Courts may be trusted to determine who, in a given case, is the riparian proprietor, and we have also omitted the definitions of "thread of the stream," as the expression does not occur in the body of the Bill as now settled.

10. We think that the Bill should save local customs not only in the Punjab but in all other territories to which it is to apply. We have accordingly excluded the section effecting this saving to the whole of British India; but we have omitted the proviso annexed to it in the Bill, as settled by the Select Committee in March 1879, as the matter to which it relates is one falling outside the scope of the present Bill.

11. The Bill, No. II, together with the Preliminary Report of the Select Committee, has been published in English in Bombay, the North-Western Provinces, the Punjab, the Central Provinces and British Burma, and in vernacular in Bombay, the Punjab and the Central Provinces. We do not propose that any further step should be taken in respect to the Bill until it has been published in the *Gazette* and circulated to Local Governments with a view to obtaining opinions on it in its new form. It must also, by order of the Secretary of State, be re-translated into the Native languages and sent home to him for consideration. In fact, having regard to the complication and difficulty of the subject, we should prefer to have our present proposals treated as suggestions thrown out for discussion rather than as furnishing a final solution of the questions at issue.

WHITLEY STOKES.
RIVERS THOMPSON.
J. PITT KENNEDY.
G. C. PAUL.
B. W. COLVIN.

The 11*th March* 1881.

No. 1219, dated 28th March 1881.

From—W. M. YOUNG, Esquire, Secretary to Government, Punjab,

To—The Registrar, Chief Court, Secretary to Financial Commissioner, Colonel W. G. DAVIES, Commissioner, Jullundur Division, Government Advocate, Settlement Commissioner, and Mr. D. C. J. IBBETSON.

I AM desired to forward for favor of opinion by the Judges of the Chief Court / opinion by the Financial Commissioner, / your opinion, copy of a Bill (No. III.) to define and amend the law relating to alluvion, islands and abandoned river-beds.

2. Your reply should reach this office not later than the 15th July 1881.

No. 2204, dated Lahore, 15th July 1881.

From—R. Clarke, Esquire, Officiating Registrar, Chief Court, Punjab,
To—The Secretary to Government, Punjab.

In reply to your No. 1219, dated 28th March last, I am directed to state that the Judges have no remarks to offer on the Bill (No. III.) to define and amend the law relating to alluvion, islands and abandoned river-beds.

No. 551, dated 30th May 1881.

From—J. M. Douie, Esquire, Secretary to Financial Commissioner, Punjab,
To—The Secretary to Government, Punjab.

With reference to your No. 1219, dated 28th March, I am directed to forward to you a copy of a memo. by the Financial Commissioner embodying his opinion on the Draft Bill No. III. to define and amend the law relating to alluvion islands and abandoned river-beds.

Note by J. B. Lyall, Esquire, Financial Commissioner, Punjab.

When I read the Bill as settled in 1879 and the report of the Select Committee, dated 19th March 1879, I was surprised to see that in the report Mr. Ibbetson's rule for dividing, between several riparian owners, land forming in or on the bank of a river, was said to be practically the rule at present in force in the Punjab. The assertion was contrary to my experience; no such rule had been issued by authority, and the character and nature of the rule seemed to show that it was not "a local usage" of this part of India. I am not sorry to see that in the Bill, as now drafted, Mr. Ibbetson's rule has been abandoned, for I consider that it would have been very difficult to carry it out in practice. The rules given in Sections 4 and 6 of the present Bill appear to me to be preferable.

2. The rules for defining a frontage are at first sight difficult to understand, but, when understood, seem fair. I cannot suggest any improvement, but I am afraid that it would be impossible to explain these frontage rules to one in a thousand of the Punjabi land-holders. When, therefore, in default of settlement of the dispute by definite local usage, the Frontage Rules have to be brought into play, their interpretation and application will rest in the hands of native officials and will, except in their simplest aspects, be a mystery to the landholders. The officials, too, will often misinterpret them.

3. In respect to claims between opposite holdings, I do not expect that the Act will have much effect in the Punjab. For, in all probability, claims between opposite holdings will be found to be everywhere governed by some local usage which is at the present day sufficiently defined and well established.

But in respect to the claims of two or more holdings on the same side of the river as to the division of land forming in front of them in or on the bank of the river, I expect that the Act will have more effect, as I think local usage is less definite on this point, or at least has been less carefully observed and recorded.

4. In most parts of the Punjab, the general theory of right in this respect between villages on the same side has, I believe, hitherto been that the former boundary which existed before the land which has reappeared was washed away, should be relaid, and where, as is generally the case now, old maps exist which indicate such boundary, I understand that they have been followed. Where no maps were forthcoming, arbitration has been generally used; and if no distinct recollection or tradition of a boundary existed, the arbitrators have generally made what seemed a fair division with reference to the frontage and general direction of the rest of the boundary line between the two villages.

I do not know what interpretation the Courts will put upon the first part of Clause H, of Section 8 of the Act as now settled. Will they hold that by this clause a boundary which can be shown by maps or otherwise to have formerly existed between villages on the same side must be relaid? If not, apparently the rule in Section 4 of a line drawn through the point of junction and bisecting the angle of the two frontages will always be followed; but in some cases, I believe, this rule will give a decision which will not be accepted as equitable by the parties.

5. The Select Committee have thought it safe to omit in the Act, as now settled, the definition of "owner."

This seems to me rather dangerous. The word "holding" which is used in the Act is ordinarily applied in the Punjab to the land held in a village by an individual landholder. But, as has been already pointed out, an individual landholder in a village has ordinarily no exclusive claim to all the land forming against or opposite to his frontage.

6. I venture to repeat what I have said before in reference to other Draft Acts, namely, that it seems to me very difficult and dangerous to attempt to frame Acts for the whole of India in regard to rights in land. The differences in local circumstances and usages are of course immense. When these are disregarded in order to secure uniformity, the effect is subversive of popular sentiments and traditions of right, and perhaps otherwise injurious. On the other hand, if an attempt is made to provide for all differences, the Act, however well drafted, becomes cumbrous, misleading and alarming to all but very careful and skilful readers.

7. I understand that in other Provinces, owing to decisions of the High Courts, a necessity is felt for legislation on the lines of this Bill; but I am not aware that this is at present the case in the Punjab, and if I interpret the Bill rightly, there seems to me to be more prospect of disturbance than of advantage from its being extended to the Punjab. But the disturbance will not be great if the Courts pay regard to the section saving local usage. The section in the former Bill which purported to provide a power of substituting fixed boundaries for shifting ones, was an attempt to meet what is in my opinion, a real need in the Punjab; but this section has been abandoned.

No. 1722, dated Jullundur, 15th July 1881.

From—Colonel W. G. Davies, c.s.i., Commissioner and Superintendent, Jullundur Division.

To—The Secretary to Government, Punjab.

I have now the honor to furnish the opinion on the Bill (No. III.) to define and amend the law relating to alluvion, islands and abandoned river-beds, called for in your letter No. 1219, of the 28th March last; and to annex hereto a diagram which I have prepared to illustrate what I have to say on that part of the Bill which deals with the mode of dividing among riparian owners, land formed on a bank by "imperceptible increments."

2. I would first remark that the distinction which the Bill draws between land formed on a bank by "imperceptible degrees" (Section 4) and land formed "otherwise than by imperceptible degrees;" (Section 6) is one which is not intelligible to me; and I doubt if, without definition, it will be understood by others. The ordinary action of rivers in the plains of India, is that they slowly change their beds; sometimes cutting away on one bank, and sometimes on the other; and as they cut away on one side so land is gradually formed, or left bare on the other. But, so far as my experience in the Punjab goes, this process, is by no means imperceptible. The work of destruction and construction goes on more or less rapidly during the season of rains and floods; and the result, when these subside, is a considerable change in the features of the river banks; and the change is a continuous one, effecting a large number of holdings for the better or the worse. That is to say, for several miles, perhaps, land will have been thrown up in front of hundreds of separate holdings; and again further on, it will have been cut away for several miles more: in some places entire holdings, in others portions only of holdings, having disappeared during the process of erosion.

3. This, I say, is the ordinary process; and I would ask, with reference to this description, if the land formed by its operation is to be considered as formed by perceptible or by imperceptible degrees, for on the reply to this question depends the selection of the particular rule to be applied for the division among the riparian owners of the newly formed land. In many cases it would be very difficult to give a decided reply to this question, for although logically speaking, it could never be affirmed that the new land had been formed by "im-

perceptible degrees," yet in practice, there would be many cases in which there would be no denying that its formation had been slow, and that its gradual growth had not been distinctly perceived.

It is not at all apparent, moreover, what the object of the distinction is; and the report of the Select Committee on the Bill, of which a copy accompanies the Bill, throws no light on this point; nor why different rules should be applied to the division of land, formed by perceptible and imperceptible degrees.

4. With these preliminary observations, I proceed to the consideration of the rules for the division of newly formed lands, given in Part II. of the Bill. And first, I will discuss the rules for the division of land formed by "*imperceptible* degrees." Assuming that such a formation can take place continuously along several holdings, I have prepared a diagram to illustrate the operation of the rules contained in Section 4, and Schedule II. of the Bill. By referring to the diagram, it will be seen that in a great majority of cases, where the line of the bank is not much curved or broken, the rules referred to could be applied without much difficulty. But that, on the other hand, as soon as the line of the bank becomes decidedly curved and twisted, there would not only be difficulty in applying the rules, but the result of applying them would be altogether unsatisfactory. I have so drawn the diagram as to illustrate the application of the rule for determining frontages in both the exceptional cases (*a*) and (*b*). The former is applied to obtain frontages for holding No. 3. By it, instead of the ordinary frontage (a straight line connecting the extremities of the riparian boundary), we get the two frontages *A c* and *c B*. The latter rule is applied to holding No. 4, and by it we obtain the five frontages *Be*, *eg*, *gf*, *fd* and *d C* in place of the frontage *B C*, which would result from the application of the general rule.

Having got our frontages in this manner, we proceed to use them to divide the newly formed land by the rule given in clause 2 of Section 4 of the Bill: *viz.*, by bisecting the angle formed by the frontages at the point of junction of each holding.

The result as regards holdings 2 and 3, it will be seen is not bad, it gives the dividing line *A x*. But when we go into the next two fields, the result is far from being satisfactory. The angle to be bisected is *c. b. e.*, and the red line *Bc* is the dividing line. All above, or to the right of that line, goes to holding No. 4, and only the portion below, or to the left of it, will fall to the share of holding No. 3. A mere glance at the diagram is sufficient to show how unfair and anomalous such a division of the land lying in front and between these two holdings would be. This is only one out of many similar cases which might be adduced to show that the rules would not work well in extreme cases.

5. This, however, might not perhaps be sufficient to condemn the rules, for such extreme cases would be comparatively rare; and in the ordinary run of cases, as admitted above, the rules would give good results. The chief ground for condemning them, to my mind, consists in their highly technical character, and the difficulty there would be in applying them in practice. It must be borne in mind that in many parts of India, as here in the Punjab, the holdings are very small; and in deciding disputes along hundreds of miles of river bank, exceptional cases must necessarily arise to which the elaborate and highly technical rule for determining frontages, contained in the second schedule, would have to be applied. Is the officer deputed to decide these disputes to carry about with him a trained surveyor to determine "whether any point in the portion of the boundary of a holding cut off by a line joining its extremities, is so situated that right lines drawn from it to those extremities contain an angle of less than 160°"—and, if so, to proceed thereafter in the manner described in paragraph 3 of the Schedule, with the result shown in holding No. 4 of my diagram? It is very doubtful if any patwári would be able to lay down the frontages in such a case, and there are few of our Native Extra Assistant Commissioners who would be able to check his proceedings, if such a patwári could be found. I think His Honor the Lieutenant-Governor will be inclined to agree with me that such elaborate and complicated rules are not suitable to this Province at least, and I should be inclined to add to any part of India, in its present state of development.

6. I pass on to the rule for dividing newly formed land, gained "otherwise than by imperceptible degrees," contained in Section 6, of the Bill. This rule is a simple one, and would not be difficult of application if it were freed from its connection with the rules for determining frontages contained in Schedule II.; unfortunately owing to the definition of "frontage" given in Section 3 of the Bill, this is not the case.

7. What is required is a rough and ready rule for dividing new land; a rule so simple, that any native of ordinary education and intelligence could apply it; and to obtain this, I would suggest the omission of the definition of frontage in Section 3 of the Bill, and the rules for determining frontages contained in the second Schedule; and I would also advise the abandonment of all attempt to distinguish between land formed by *perceptible* and imperceptible degrees. The rule laid down in Section 6 of the Bill might then be retained and applied to all newly formed land alike, including islands and abandoned river-beds.

The fact that a frontage is curved, needs not, it seems to me, in any way hinder the application of this rule; and the result would probably be fairer than if a series of straight lines, closely following the natural curves of the holding, were obtained by the elaborate processes described in Schedule II. In the case of islands, the first proviso to Section 6 of the Bill might be retained. The second proviso should, I think, be omitted.

8. The only other remark I have to make, is in regard to the omission from the Bill of all mention of land transferred from one bank to another, by a sudden change in the course of the river or stream, without destroying the identity of the land so transferred. This is the second of the cases dealt with in Section 4, of Regulation XI. of 1825: where it is provided that in such cases the land shall remain the property of the original owner. Instances of this kind are very common in the Punjab, and provision to meet them should, I think, be specially made in a Bill of this kind. The case of a river suddenly abandoning its bed, is provided for in the 3rd Clause of Section 6, but only with the object of laying down a rule for determining the rights of riparian proprietors to the abandoned bed of the stream itself. The case I refer to is quite different, and, so far as I can see, is no where touched by the Bill; and there is nothing in the Special Committee's report to show why transfers by avulsions, as they are commonly called, have not been dealt with by the Bill.

No. 1203, dated 9th July 1881.

From—Denzil Ibbetson, Esquire, Deputy Superintendent, Census, Punjab,

To—The Secretary to Government, Punjab.

In compliance with his No. 1219, dated 28th March 1881, has the honor to submit an opinion on Alluvion Bill No. III.

Opinion on Alluvion Bill No. III.

In my opinion the present Bill, with the exception of the rules for the division of newly-formed land, is a great improvement upon Bill No. II. The exclusion from the Bill of all positive provisions regarding the relation between the ownership of sites and the ownership of land newly formed upon them removes what was, to my mind, one of the most serious defects in the earlier Bills. And the saving of local customs generally, and not merely in the Punjab, and the omission of the definition of "owner," are, I think, improvements also.

2. I much regret the omission, on the ground that it is beyond the scope of the present Bill, of the proviso to Section 12 of Bill No. II. empowering Local Governments to substitute fixed boundaries for local custom. I gave, at the beginning of my opinion on Bill No. I., my reasons for wishing to see this substitution generally effected; and I confess I do not understand what would be the subject matter of a Bill within the scope of which the provision in question would fall more naturally than here.

3. The only principle embodied in the Bill to which I would demur is the distinction drawn in Sections 4 and 6 between land formed on a bank or shore (1) "by imperceptible degrees," (2) "otherwise than by imperceptible degrees."

In the first case, under the Bill, the owners of the bank on which the land is formed would alone be entitled to property in it, however far it might stretch across the river; in the second case the owners of the opposite bank would take shares also in the event of the new formation stretching more than half way across the river bed. What is formation by imperceptible degrees? As a rule, I fancy, alluvion is formed under water during the flood season, and disclosed when the floods subside. And why should the claim of owners on the opposite bank to share in land in a given position be made to depend *solely* upon the question whether it has been formed by imperceptible degrees, or otherwise?

4. I turn to the practical rules for giving effect to the principles of the Bill by actual division of the land between riparian owners. They are contained in Sections 4 and 6 and in schedule II. They seem to me unsatisfactory. In the first place, the rules for determining a frontage given in the schedule, though intelligible enough to any body who is familiar with elementary geometrical conceptions, are, I think, ill-adapted for the guidance of mofussil courts. Not only would the language of the schedule be unintelligible to the majority of the native courts, and even to not a few highly-educated Englishmen, but the technical appliances at the disposal of the lower courts are insufficient for the application of the elaborate and delicate method which it is proposed to erect into law. So, too, I cannot help thinking that the rule given in Section 6, though apparently a simple one, will be found exceedingly difficult to follow in practice, especially where a single frontage consists of many straight lines, irregularly disposed, and with sudden salient angles; while the proviso contained in the last clause of the section, that the chord shall always be substituted for an arc of a curve, will, I think, cause confusion. It will often be difficult for any but a mathematician to say where each curve begins and where it ends; and whether the boundary between two easily ascertainable points is a curve, or composed of straight lines.

5. Again, the rule contained in the second clause of Section 4 is, as already pointed out in para. 5 of my opinion on the first Bill, impracticable. *Fig.* 1, appended, shows how the rule will fail. If A, B, C, D, E, F, are the terminal pillars of separate holdings on the bank, and the bay A, B, C, D, E, F, is filled up by alluvial deposit, the dotted lines will be the dividing lines under Section 4, and will of course be quite useless for all practical purposes of determining the ownership of a large proportion of the land. The figure shows a very mild case; and much worse ones would constantly occur in practice.

6. But the rules seem to me unjust as well as impracticable. Both Section 4 and Section 6 make the ownership depend upon the situation of an artificial frontage which, by a curious peculiarity of Schedule 2, is arrived at in a most arbitrary manner. Clause (*b*) and Section 3 of the Schedule apply only to such portions of the primary frontage as lie within the riparian boundary of the holding. Now take the two cases given in *Figs.* 2 and 3 respectively. Here the shape of the bank is identical in both cases, save that in *Fig.* 2 the bank is concave, and in *Fig.* 3 convex to the water. Now, since in *Fig.* 2 the primary frontage A, B, is wholly in the water, and is always nearer to the bank A, B, than it is to the bank C, D, therefore the straight line A, B, is the final frontage of the holding. But in *Fig.* 3, since the primary frontage E, F, is wholly on land, the final frontage will be E, a, b, c, F. Now, if the land to be divided falls under Section 6, each village will take (roughly speaking) all that lies on its side of a line drawn half way between C, D, and A, B, in *Fig.* 2, and between C, D, and E, a, b, c, F, in *Fig.* 3. Why should this great inequality exist between the method of division in the two cases? Why should not the sweep of the bank be followed as closely in *Fig.* 2 as in *Fig.* 3?

7. Where the rule of Section 4 comes into play, a still greater injustice will result. This rule makes the dividing line the line bisecting the angle between the frontages at their point of junction. Thus the direction of the dividing line will be wholly governed by the direction of the *last portion* of the frontage; and a line determined by a local curve in the bank extending for only a few hundred yards may prevail against the general direction of a frontage several miles in length. And when the peculiarity of the Schedule noticed in the preceding paragraph also affects the case, the results may be most extra-

ordinary. *Figs.* 4 and 5 will show what I mean. The bank here again is of the same contour in both cases, but in one case concave and in the other convex to the water. Since, therefore, A, B, and E, F, lie wholly on land, and B, C, and D, E, wholly in the water, A, B's frontage is A, a, b, c, d, e, B, and B, C's frontage is B, C, D, E's frontage D, E, and E, F's frontage is E, a, b, c, d, F. Now, the dividing line between the two villages being wholly determined by the angle e B C. in *Fig.* 4. and by the angle a e. D. in *Fig.* 5. the insisting upon an approximation to the shape of the bank where the primary frontage is on land, and denying it when it is in the water, produces the greatest inequality; while in *Fig.* 5 the purely local nose of land at E. is allowed to override the long straight bank running away towards F., greatly to the prejudice of D E. The arrow-headed lines in the figures show the direction in each case of the lines which, under the Bill, will divide the alluvion between the two villages.

8. It seems to me impossible that any rule should work fairly which may make the division depend upon purely local and accidental departures from the general sweep of the bank. There are two lines available for guidance,—the frontage and the thread of the stream. The latter seems to possess many advantages over the former. In Section 4 of the Select Committee's further report, it is objected to (1) because it is difficult to determine; (2) because it may be very irregular; (3) because in some cases perpendiculars from terminal pillars, which are the only lines which can be profitably used in connection with it, cannot be drawn. As for the first and second objections, it is, I believe, far more difficult to determine a frontage which shall work satisfactorily than to determine the thread of the stream; and this for the very reason that the latter must of necessity be, in general shape, *less* irregular than the former, as it occupies a mean position between both banks, instead of being controlled by one only; and the accidental irregularities of one bank tending to neutralize those of the other, the resulting line is much more representative of the general sweep of the river, which is what we want to follow, than any frontage can be. I admit that in many cases it may be difficult to define *the bank* with precision, but this uncertainty would affect the frontage even more materially than it would the thread of the stream. As for the third objection, I think I am right in saying that it is always possible to draw a perpendicular (normal) from any point to a line which, speaking colloquially, goes past it, and does not pass through it, and this must always be the case with the thread of the stream in respect of a point on the bank. Thus, I would retain the thread of the stream as my guiding line. But, as pointed out in my opinion on the second Bill, the rules proposed in that Bill were open to many serious objections.

9. I still think the rules I originally proposed are, at any rate, framed upon the only true principle. I would, however, slightly alter their wording so as to exclude the word "frontage" altogether from the Act, as my rules are really wholly independent of any artificial line joining the terminal pillars of the holdings. I would word the rules thus :—

"Where, from natural causes, and either by accumulation of material or by recession of the water, an island is formed in, or land is formed on the bank of a river, the sea, or a lake,

"And where a river suddenly abandons its bed,

"each riparian owner is entitled to so much of the island, land, or the abandoned bed as is included between a contour to be drawn as hereinafter provided, the riparian boundary of his holding, and lines drawn waterwards from the extreme points of that boundary to meet the contour, and in a direction perpendicular to it.

"When more than one of such lines can be drawn from one and the same extremity, the shortest of them shall be deemed to be the including line, and when two or more of such lines are equal in length, and there is none shorter than them, the line bisecting the angle between the extreme positions of the shortest line shall be deemed to be the including line.

"Provided that no riparian owner shall have any claim under this section to any part of an island which is separated from his bank by a channel not fordable at any point." [There is no need to declare expressly Govern-

ment right to islands thus cut off from both banks, as it follows from Section 10 of Bill No. III.]

"The contour mentioned in Section   shall be determined as follows:—

"In a river it shall be the thread of the stream (as defined in Section 3 of Bill No. II).

"In the sea or a lake, it shall be drawn within the lake or sea, parallel to the general sweep of the nearest shore, but neglecting all minor and local inequalities of outline, and at such a distance from that shore as to include between it and the shore all the land to be divided. When any part of this land is so situated that, of the two nearest shores, neither can be said to be nearer than the other, the contour, so far as regards these shores, shall be drawn equidistant between them, without regard to minor and local inequalities of outline." The last clause, from the words "when any part of this land," will rarely be needed. The figures appended to my opinion of Bill No. II. show how the rule about islands in a lake or sea would work.

10. The above rules make the whole division of the land depend upon the thread of the stream in a river, and upon the general sweep of the bank in a sea or lake; and these are, I think, the proper determining lines. In fact, the rules simply express in technical language what is done by the people every year when they allot to each man the land "opposite" his river frontage. The rule that minor and local inequalities of outline shall be neglected is uncertain; but I think this uncertainty is in accordance with the justice of the case. It is obvious that small inequalities of outline that would properly be taken into consideration in dividing a small island 300 or 400 yards long would equally properly be excluded in dividing one 7 or 8 miles long. I think the point might well be left to the judgment of the court in each instance; and I would add a similar provision to the definition of the thread of the stream.

---

o. 143 C., dated Camp, 12th June 1881.

From—Major E. G. Wace, Settlement Commissioner, Punjab,

To—The Secretary to Government, Punjab.

Reports on Bill to define and amend the law relating to diluvion, &c.

I have given my best consideration to the Draft Bill No. III "To define and amend the law relating to alluvion, &c.," forwarded for my opinion with your No. 1291, dated 28th March.

Remarks on the subordinate position assigned to local usage.

2. The frame of the Bill is to state a law for general observance, except in cases in which a well-established usage to the contrary can be proved. This was also the frame of the Regulation of 1825, which the new Bill will supersede. But I submit that our present knowledge of the usage of the country is far in advance of that which our predecessors possessed in 1825; and the extension of the Regulation of 1825 to the Punjab was not the result of any express legislation, but it happened incidentally after annexation along with the application to our new conquest of the other Land Regulations of the North-Western Provinces. This consideration has very powerfully affected the working of the law stated in the Regulation. It has been always present to the minds of our Judges that the law was not originally enacted for the Punjab; and the universal existence of local customs on the subject has been so generally recognized, that in the great majority of cases it would be more correct to say that the Revenue and Civil Officers have rather searched for the custom and recognized it, than that they have looked to the Regulation as the normal law, varied only occasionally by local usage.

And urges that this is undesirable.

3. I think it will neither be just nor expedient to enact a new law embodying in a stronger form the principle of the Regulation of 1825. The new law will have a firmer standing and a more binding force than the old Regulation; and it will reaffirm its principal error, the assumption of the general absence of definite local custom.

4. If the law dealt with by the Regulation of 1825 is to be revised, it should be revised in accordance with those principles on which all the rights in land in the Punjab have hitherto been treated. The proposed law appears to me to be entirely opposed to those principles. The system for securing rights in land on which we have hitherto proceeded is this :—By means of land settlements the Government has carefully brought to record all the rights in the soil, and the customs by which those rights are governed. Usually the settlement records have sufficiently elucidated those rights; and such disputes as have arisen have been decided by our Civil Courts with strict regard to pre-established custom. What modifications of such customs have been introduced, have been limited to what was required by public policy, and have been embodied in Acts framed like the Punjab Laws Act and its amending Acts after an impartial balancing of the requirements of local usage and public policy. In one instance, when the Settlement and Judicial agency proved insufficient to define successfully the respective limits of the rights of owners and tenants, the Legislature stepped in and passed the Punjab Tenancy Act. A large portion of that Act deals with the procedure necessary to the decision of disputes between owners and tenants; in respect of some of the incidents of tenancy, it enacted new rules on the grounds of public policy; but so far as it defined the major incidents of tenant rights, it aimed at expressing the custom of the country as understood by our best qualified officers, and as previously administered by our Revenue and Civil Courts. This is a safe method of legislation. Does the Bill now proposed proceed on the same lines ? Not at all. It makes no effort to ascertain and affirm the usages, which the land-owners have observed for generations past, and which have gained so much in exactness during the past 30 years of our rule. It merely contemplates their possible existence; but failing strict proof of them, it prescribes as law rules which, taken as a whole, the land-owners have never yet acted on in any instance within my knowledge.

and that it departs from the principles by which our treatment of rights in land has hitherto been governed.

5. As regards the Punjab, the Bill will neither codify, define, nor amend the large chapter of law with which it proposes to deal. It is deceptive to assume that Regulation XI. of 1825 is the only law on the subject which exists in the Punjab; it is the only law on our Statute Book; but there is a vast extent of usage, more or less imperfectly reduced to writing, in our settlement records and in the decisions of the Chief Court, which, in so far as it has firmly bound for generations past the relations of large numbers of land-owners and still continues to do so, is as truly law as the acts of our present Legislature. The proposed Bill, if passed into law, will be a standing invitation to every one to look for the decision of questions on which he is at issue with his neighbour, not to a just application of the old usages of the country, but to the new rules stated in the Act. The Act will be appealed to, and the old usage will be denied whenever a legal practitioner (most of them of a standard much below that which has raised the English Bar to its high position) suggests that it will be to a litigant's interest to do so. The rules stated in the Act will continually tend to undermine local usage; but how far those rules will really be better suited to the circumstances of the land-owners than the usages which have grown out of their past history and have their silent assent, is a matter of speculation. Stated shortly, my contention is, that hitherto in dealing with rights to the soil we have been content to be governed, as far as possible, by a fair interpretation of the history of those rights and by local precedent and usage. This policy is just and safe and it has powerfully contributed to the contentment of the people; and to set it aside in favor of principles which, however speciously supported by extraneous experience, are not rooted in the history of the lands to which they will be applied, and have not grown up with that history, is unsound and will not improbably injure a people who are, and in the necessity of the case must be, practically unrepresented in our Legislature.

Urges the wisdom of giving a more hearty recognition to local usage.

6. The more carefully I consider the Bill, the more I am impressed with the absence of any sufficient appreciation of the wide extent of the property which will be affected by it.

and the vast character of the interests at stake.

The river frontage of the seven great rivers of the Punjab Province (I include the Jumna), reckoning down one bank only, considerably exceeds 2,000 linear miles. The alluvial beds of these rivers vary from 1 to 10 miles in breadth. Speaking broadly, the whole has been for generations past subject to private rights. The villages interested are numbered by thousands; and the owners and cultivators by tens of thousands. Why should vast interests be unworthy of their own special place on the Indian Statute Book,—a place similar to that wisely accorded to the Punjab Land Revenue and Tenancy Acts? I fail to understand on what grounds it is thought safe to deal with such vast interests in a short Act of 10 sections.

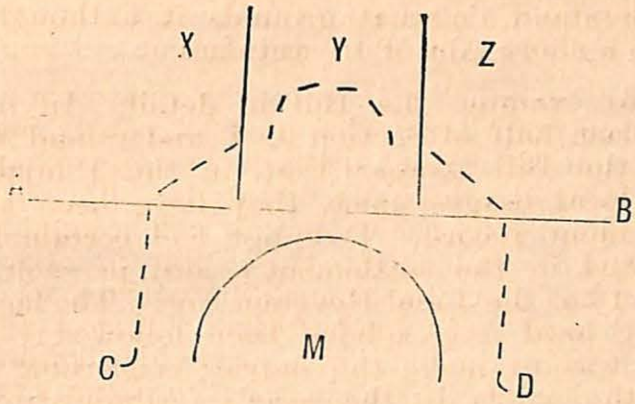
Notices the probable defects of the settlement record in protecting local usage.

7. I proceed to examine the Bill in detail. In inserting into it the last half of Section 9, I understand that the framers of the Bill assumed that, in the Punjab, wherever definite local usages exist, they have been stated in the settlement record. I do not feel certain how far such usages have been incorporated in the settlement record, in such a manner as to be protected by Section 16 of the Land Revenue Act. The fact is that three or four systems of recording local usages have been followed :—(i). The practice in our first settlements was to make the entries concerning customs very brief, and to incorporate the whole in the record (Administration Paper) of each village; there is no doubt that such entries have the force prescribed in Section 16 of the Land Revenue Act. (ii). Subsequently, as in the 1st Jhelum Settlement, completed about 1860 A.D., the practice arose of stating in a Tribal Code customs common to a considerable group of villages; and the record of each village may or may not contain a statement assenting to this Code. (iii). In the settlements made since the passing of the Land Revenue Act, the practice has again been diverse. Government at first directed in the Revenue Act Rules (*vide* C iii. 34 of these Rules) that the second system should be followed, with the addition that the Tribal Code should be distinctly incorporated in the village record by reference; and this was done in a few districts. (iv.) But it was soon found that the Tribal Codes had assumed very considerable dimensions; and as serious apprehension was felt of the results of attaching a presumption of correctness to all the entries in these Codes, Settlement Officers were, with the approval of the Punjab Government, directed not to incorporate them by reference into the settlement record, but to leave them to be judged on their merits. For these reasons it is not possible to be confident how far local usages have been entered in our settlement records in such a manner as to have the presumption of truth intended by Section 16 of the Land Revenue Act. A matter of this nature is likely to be closely argued in our Civil Courts. And if, as is not unlikely, litigants are, owing to technicalities of this character, put to the trouble, delay and expense of proving well-established usages, Section 9 will have effected only imperfectly the object with which it has been inserted in the Act. And even if in the imperfect condition of the existing law it may be truly stated that a person asserting a local riparian custom is required to prove that custom, I would urge that, having regard to the wide application of these customs, to their old established character, and to their notoriety outside our Courts, such a state of the law ought not to be continued. It makes our Courts assume ignorance of what is law, and of what every one outside the Courts know to be law.

Urges that the rules stated in Section 6 do not give sufficient consideration to the bearing of previous losses.

8. As regards the rules stated in Chapter II. of the Act, it seems to me that, though not expressly based on such a principle, they will operate as if it could properly be assumed that land formed by river action was essentially new property; whereas the principle underlying most of the riparian usages of the country is that such land is not new, but the restoration to a profitable condition of land which, "*within the memory of man*," was in a similar condition, but which has intermediately been submerged by the river. Speaking broadly, any usages or rules which can be stated on the subjects covered by the Bill must be justified by one or other of these assumptions. I will endeavour to explain by example what I mean. Any one who has observed the action of the Punjab rivers is aware of the tendency of the main stream

to work in curves backwards and forwards from one bank to the other. In cutting into a bank the stream frequently works in horse-shoe form or in a larger curve. This is one of the commonest incidents of river action. Now, this being so, if the rough sketch given below be examined, I think it will be admitted that the rule stated in Section 6 of the Bill will frequently in practice have this effect, that the owner who has lost most land shall be entitled to a smaller share of new land than his neighbours who have lost less:—



A B.=bank of river in 1850 A.D.

C D.=bank hollowed out by river action in 1851 A D.

X, Y, Z, are three holdings bordering on the river.

M.=land newly formed in consequence of the river action of 1851.

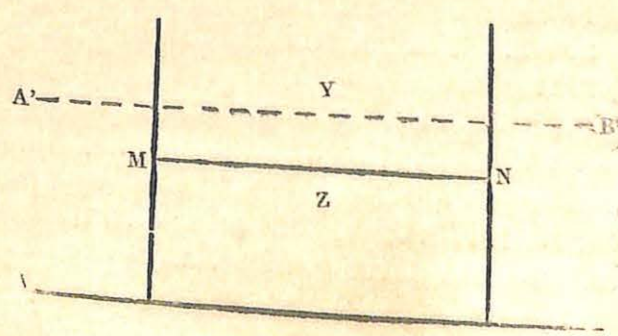
I am not sure whether I have made my meaning clear. But if, as I believe is the case, the destructive action of these rivers usually works in curves, the greatest loser will usually be furthest off from land newly formed in front of his holding, and will therefore take the smaller share of it. This is right or wrong according as' the previous loss is without or within human memory.

and that they are theoretical and impractical.

9. Independently of this, I urge that the rule proposed in Section 6 is not safe and ought not to be adopted, because it is not deduced from established usage. In dealings with rights in land, nothing is just, nothing is safe, except what is based to some extent on local precedent. We are not legislating for a new country, but for an old one. Is this rule a fair and reasonable expression of the past practice of the Punjab? It does not pretend to be anything of the kind. It is framed in order to save our Judges the trouble of enquiring what that practice has been. And it has not even the merit of having been worked out in communication with the land-owners who are interested in its working. As for the highly technical rules stated in the 2nd Schedule, by the aid of which it is proposed to apply this rule, I can only say, while acknowledging the evident sincerity and care with which they have been framed, that I have myself the greatest difficulty in understanding them; that, whatever the past usage of the country has been, it has never required the aid of such complicated technicalities; and that it will be impracticable for a simple agricultural population to apply such rules.

Urges that the rule stated in Section 4 is not adapted to large rivers.

11. Similarly, I do not think the rules proposed by Section 4 can justly be applied to the Punjab rivers. The justice or injustice of the principle that an owner shall take all land accruing in front of his holding depends entirely on the past history of that holding. Thus—



Let A B be the river bank in 1850 and A B the bank of 1851. Of the two holdings, Y and Z, the river has in 1851 destroyed the whole of Z and part of Y. When in later years the river returns to its former limit, why should Y. take not only what he has lost himself, but also the whole of the site of Z's. former holding? It would would be easy to multiply cases of this kind, and to show that like objections based on the past history of the holdings may make the rule proposed in the 2nd clause of Section 4 equally unjust. We are not dealing with petty streams which a man can throw a stone across, but with rivers of which the bed will shift hundreds of yards in one autumn's floods.

and that the Bill wholly ignores questions arising out of the co-parcenary tenure of property.

11. The Bill also wholly ignores the questions which arise out of the co-proprietary character of village communities. The first question which arises as regards newly-formed land is, whether it can be claimed by the adjacent holdings or is owned jointly by the community. The estate again may be divided into sub-divisions; and if you look into the origin of these sub-divisions, you may find that one of them has no claim on such increments, while all the others have, or the land may be thrown up in front of the holding of a man who, unlike his fellows, has no right outside the four boundaries of his holding (*e.g.*, a malik kabza), or who is a recent purchaser with no share in the village common. You will very likely not find these matters stated expressly in the village record, though they can be understood from the history of the village as written in that record. But if we enact as law a rule which has no foundation in the antecedents of a man's property, we shall certainly promote litigation and lead people to look for their rights outside those antecedents.

Summary.

12. To sum up, my objections to the Bill are as follows:—

(i). It ignores the equitable and necessary nature of the distinctions which appropriately arise between riparian rights on the sea shore, on large silt-bearing rivers, and on petty streams—a distinction arising out of the widely different character of alluvial and diluvial action in each of these cases;

(ii). it seeks to find rules governing those rights, not in the careful investigation of past usage, and of the antecedents of each riparian property, but in abstract principles neither hitherto acted on nor desired by the land-owners concerned;

(iii). it does not codify existing law, as expressed in the ascertained usages of the country, but leaves it as ill-defined as before;

(iv). it proposes rules which are not suited to the circumstances of the large rivers of the Province, and which have never yet been applied either to them or to the smaller rivers;

(v). the principal modification required in the riparian usages of the Province has been deliberately eliminated from the Bill (compare the proviso added to Section 12 of Bill II and para. 10 of the Committee's report on Bill III);

(vi). it fails adequately to appreciate the importance of the subject in the Punjab Province, the magnitude of the interests affected by the Bill, and the extent to which the Government, by the whole course of its administration for 30 years past, is pledged to uphold the undoubted and old established usages of the people.

Recommends that a special law on the subject be framed for the Punjab.

13. The expectations thus created in the minds of the people will not be adequately met by anything short of an earnest attempt to express those usages in an Act framed for the Punjab alone. The materials for such an Act exist in abundance, and to express those materials in an Act of the Legislature would be a real contribution to the codification of Indian Law, and would at the same time confer a great benefit on the Province.

P.S.—On further consideration of this letter, I do not think I have expressed as clearly as I could have wished my doubts concerning the extent to which local usage will be effectually protected. Where, as on the rivers of the Punjab, there exists a large mass of local usage, my feeling is, in the

first place, that in many instances the roughly-drawn settlement records may be found to express it very imperfectly, and in the next place that the gaps in such usages (whether arising out of shortcomings in the settlement records or out of failure of other proof) ought to be filled up by equitable inductions from the general body of usage, and not by rules of law framed without any reference to adjacent usage.

No. 902 D.A., dated 19th August 1881.

From—C. H. SPITTA, Esquire, Officiating Government Advocate, Punjab,
To—The Secretary to Government, Punjab.

IN reply to his No. 1219 of 28th March last, has the honor to submit an opinion on the Alluvion Bill.

Opinion by C. H. SPITTA, Esquire, Officiating Government, Advocate, Punjab.

Section 3—"*Island.*" I cannot see the advantage of the limitation to this definition contained in the words "and capable of being employed for cultivation, pasture or other useful purpose."

Moreover, the question as to what is a "useful purpose" is one likely to create great diversity of opinion, and to lead to much litigation. I think the ordinary definition of an "island" as "land surrounded by water" is quite sufficient. The persons to whom the island may belong can best decide what use it is to be put to.

Section 4.—This section clearly contemplates *individual* riparian owners, and provides for the distribution of the increment between them. It would, I think, be inapplicable to the Punjab, where, as pointed out in letter No. 599C., dated 27th August 1878, from Secretary to Government, Punjab, to Secretary to Government of India, Department of Revenue, Agriculture and Commerce, paragraph 7, the *village*, and not the individual, is the unit. As further explained in that letter, it is essential for this Province that "land affected by river action should be treated, whether in determining the ownership of islands or the gradual accretion of land by alluvion, its rapid loss by diluvion, or its sudden loss by so-called avulsion or change of the river-bed, as the property of the villages possessing the land on the banks, and not as belonging to individual proprietors."

This important principle appears to me to have been lost sight of in the present Bill.

Section 6.—In my opinion the rule for apportionment contained in this section is much too complicated to be likely to work satisfactorily in practice, or to be properly understood by the simple villagers to whose lands it must be applied.

Section 8, *paragraph c.*—I see no reason why the grantee of an estate subject to river action should not obtain the benefit of any alluvial increment to his estate, considering that he is liable to bear any loss of area that may result from the action of the river.

Schedule II.—The second Schedule, which lays down the rules for determining the frontage of a holding, is also, in my opinion, much too complicated to be likely to work well in practice. I much prefer the simpler rules contained in Bengal Regulation XI. of 1825, which long experience has made thoroughly understood by the people.

Lastly, I would point out that the Bill apparently deals only with riparian *proprietors*, whereas Section 4, Regulation XI. of 1825, recognises the right of *tenants* to accretions to their holdings, and this right has been asserted and admitted in the Punjab in many instances (*see* Punjab Record 1879, Nos. 96, 127, and Punjab Record 1880, No. 1). The right has also been recognised in Bengal (*see* Indian Law Reports, 5 Cal., 823).

The only possible reservation of the tenant's right is that expressed in paragraph (6) of Section 8 of the Bill; but I think the word "owner" is likely to mislead, and that on so important a point affecting the interest of a large and valuable class, the Bill should leave no room for doubt.

No. 250 S., dated 2nd September 1881.

From—W. M. YOUNG, Esquire, Secretary to Government, Punjab.

To—The Secretary to Government of India, Legislative Department.

IN reply to your letter No. 373, of the 18th March, I am directed to submit the opinions of the officers marginally noted on the 3rd draft Bill to define and amend the law relating to alluvion, islands and abandoned river-beds, together with the following remarks by His Honor the Lieutenant-Governor.

(1). Mr. J. B. Lyall, Financial Commissioner, Punjab.
(2). Colonel Davies, Commissioner, Jullundur Division.
(3). Mr. D. Ibbetson, Deputy Superintendent, Census, Punjab.
(4). Major E. G. Wace, Settlement Commissioner.
(5). Mr. Spitta, Government Advocate.

2. Among the most important features of the Bill in its present form is the distinction now drawn between alluvial land formed by imperceptible degrees and that formed by natural causes otherwise than by imperceptible degrees; and secondly the abandonment of the use "of the thread of the stream" as a determinant of rights in land formed by accumulation on a river's bank or by recession of water, and the adoption in its place of a somewhat complicated method of fixing imaginary frontages of holdings.

3. With regard to the first of these two changes, the Lieutenant-Governor agrees with Colonel Davies and Mr. Ibbetson that there is no obvious necessity for the distinction which has been drawn, and that in practice it would be extremely difficult to decide whether the formation of alluvial land or accumulation of fresh soil has taken place by perceptible or imperceptible degrees. The difference which has hitherto been recognized in this Province between lands formed by accretion and severed by so-called avulsion or by change in the river-bed appears to His Honor a more practical and satisfactory distinction. But, concurring with all officers who have been consulted, Sir Robert Egerton is of opinion that the most serious defect in this Bill, and one which in practice will go far to neutralize any advantages that may be expected from it, is the extremely complicated nature of the rules laid down for determining rights in alluvial land formed by imperceptible degrees. It must be remembered that in the Punjab, a province traversed by many large rivers liable to sudden changes of bed and to violent floods, the villages whose lands are subject to annual change by the accidents of nature may be numbered by the thousand, and the cultivators among whom may arise questions of rights connected with alluvion form no inconsiderable portion of the whole population. It is therefore of first importance that the law on this subject should be simple and easy, such as may be readily grasped by the agriculturists themselves, by the subordinate revenue officials of each village, as well as by the higher native judicial agency. The rules provided in the Bill under consideration may be within the comprehension of English officers accustomed to deal with mathematical problems, although even to such persons His Honor believes that they will, in the majority of cases, present no small difficulty in their practical application, but to the lower classes of revenue officials, to many Native Judges and to the agriculturist alike they must be hopelessly unintelligible and confusing. It would further appear that although the division resulting from the rules laid down in Section 4 and Schedule 2 may be just and equitable between estates where the river runs in long reaches or in gentle curves, but the Punjab rivers are for the most part extremely tortuous, and cases may be easily imagined similar to those described by Colonel Davies where sudden bends or indentations in the river's bank may determine a boundary line contrary to equity and the natural expectations of the owners of the holdings.

4. Nor does it appear that the present Bill recognizes the existence of village proprietary bodies and their claims as communities to rights in alluvial land. In many parts of this province the village, and not the individual, is the unit to be considered in such cases. The Lieutenant-Governor would invite attention to the views expressed in my predecessor's letter marginally quoted, in which it is explained that for the Punjab at least it is essential that in determining the ownership of islands or of lands formed by gradual accretion or suddenly transferred by so-called avulsion the land affected by

No. 599 C., dated 27th August 1878, to Government of India, Department of Revenue, Agriculture and Commerce.

river action should be treated as the property of the riparian villages, and not as belonging to individual owners. The Lieutenant-Governor further considers that cases under the law of alluvion, as between villages with which separate settlements of land revenue have been made, should be decided by the revenue authorities, leaving to the ordinary Civil Courts such suits only as affect claims between private persons. His Honor would also invite attention to the remarks of the Financial Commissioner regarding the omission in the present draft to define the word "owner," and to the interpretation to be placed on clause (*h*) of Section 8, which will apparently supersede the rule under Section 4 if the courts should hold that, under this clause, a boundary line which can be shown by maps or otherwise to have existed formerly must again be laid down. I am further to observe that it is presumed that the reason for omitting all mention of land transferred by avulsion is that proprietary rights in such land are not affected by the change in the course of the river.

5. In conclusion, the Lieutenant-Governor concurs with the Financial Commissioner and with the other officers who have been consulted that the prospect of injurious disturbance of rules now recognized is greater than any advantage to be expected should the present Bill become law. If due attention is paid by the courts to the provisions of Section 9, by which local usage is saved, the amount of inconvenience will no doubt be considerably reduced; but any attempt to work the rules laid down by the Bill in regard to claims for alluvial lands will, His Honor feels, be positively disastrous.

6. The Bill was published in the *Punjab Gazette* on the 19th and 26th May and 2nd June last, and in the *Urdu Gazette* on the 25th of April 1881.

Note by Lieutenant-Colonel E. G. Wace, Commissioner of Settlements and Agriculture, Punjab, dated Simla, 14th July 1884.

On the demarcation of the boundaries of estates exposed to the action of the Punjab rivers.

It occurs to me that, both in the discussion on the revision of the Punjab Laws Act, and in that on the revision of the Land Revenue Bill, one subject of importance has been omitted, which in previous proposals for legislation has been authoritatively set down as suitable for inclusion in a provincial measure of the nature of those under discussion. I allude to the determination of rights in land exposed to the di-alluvial action of the Punjab rivers.

Previous papers appended.

2. I append three copies of the Indian Alluvial Bill;

No. I, as it was introduced in September 1878;

No. II, as amended and republished in March 1879.

No. III, being a further amended Bill, dated March 1881.

I also append copy of a letter, written by my predecessor Mr. J. B. Lyall, dated 11th July 1878, on a Draft of the Bill antecedent to, but similar to Bill No. 1; which latter may be taken as a fair statement of the difficulties with which we have to deal.

Proposal in 1879, that rights should be determined in all river beds.

3. The whole of the correspondence is not now at my command. But in commenting on the Bill in its first stages myself, and I believe several other officers, contended that the special circumstances of the Punjab rivers, and of the village communities among whom the beds of these rivers are portioned out, were not adequately met either by the provisions of the proposed Alluvion Bill, or by the then existing and still continuing practice of referring all disputes to the Civil Courts, where they are decided according to customs which arose under conditions very different from those now prevailing. We urged that an end should be put to these disputes by determining finally the line (or boundary) in the river-bed, up to which each estate or holding should take any land formed by alluvion; that an efficient survey should be made of those boundaries; and that no claim should be heard in any Court contrary to the boundaries so laid down.

Included in the Bill of 1879, but subsequently thrown out as a provincial matter.

4. This proposal appears to have met with the approval of Government, for in Bill No. II (March 1879) provisions were inserted (Section 12) with this object. And the appended statement of objects and reasons (para. 11) says, that the local usages "besides being objectionable on economic grounds and

adverse to imperial interests are more or less unsuited to the time and distasteful to the communities affected by them. In these circumstances, we have deemed it right on the recommendation of experienced officers, to provide a procedure whereby such usages may, if thought expedient, be discontinued, and fixed boundaries substituted for varying boundaries in riparian estates." But in the 3rd Bill (March 1881) the provision was omitted on the ground (see para. 10 of objects and reasons) that it related to a matter falling outside the scope of the Bill. I understand this to mean that the matter relates to the Punjab only, and that it should, therefore, be dealt with in the Acts which apply specially to the Province.

And may, therefore, conveniently now be dealt with in connection with the Punjab Bills now under consideration.

5. The Punjab Laws Act, and the Land Revenue Act being now under revision, it would appear desirable to act on this decision; and the more so, because proposals for river surveys of the nature necessary to give effect to the proposal of 1879 have recently been formulated by the Surveyor-General and myself, in consultation with each other, and are now before the Financial Commissioner. The river surveys thus contemplated are of a very inexpensive character.

Enactment now proposed.

6. I, therefore, recommend that the following section be inserted in the Land Revenue Bill immediately before the sub-chapter which deals with boundaries and survey marks, in the chapter on records of rights and village papers :—

(1) "For the prevention and decision of disputes relating to rights in the beds of rivers and torrents, or in alluvial lands situate in and adjacent thereto; the Local Government may, by notification, direct that in any local area the rights of private persons and of Government in such beds and lands be inquired into, and determined by the Deputy Commissioner or by any officer invested for this purpose with the powers of a Deputy Commissioner.

(2) "In determining these rights, the Deputy Commissioner shall not be bound solely by local usage, but shall make an equitable award, based partly thereon and partly on the diluvion suffered, and alluvion enjoyed by each claimant from the year 1845 to date.

(3) "The Deputy Commissioner shall record his awards in maps and registers of the same form as those prescribed for the records of rights, or in any other form prescribed by the Financial Commissioner in this behalf.

(4). "Subject to such appeal and revision, as may be provided by the Local Government in rules issued under this Section, the said record shall be conclusive proof of the rights dealt with therein."

No. 1471, dated Lahore, the 20th December 1883.

From—F. C. CHANNING, Esquire, Senior Secretary to the Financial Commissioner, Punjab,
To—The Junior Secretary to Government, Punjab.

UNDER orders passed by Mr. Lyall, as Financial Commissioner, I am directed to address you on the subject of the boundary between the Hoshiárpur and Jullundur districts on one side and the Umballa and Ludhiána districts on the other side of the river Sutlej.

2. I am in the first place to submit copies of a letter from the officiating Commissioner of Lahore, No. 110, dated 17th March 1856, to the Financial Commissioner, and of the Financial Commissioner's reply, No. 1691 of 17th May 1856. It will be seen that the Financial Commissioner then ruled that in case of a sudden change in the river's course in such a manner as to leave between its new and old channels a tract substantially unchanged, it was not necessary that the local jurisdiction should be altered so as to follow every change in the course of the deep stream; if serious inconvenience were found to result from leaving the old jurisdiction unaltered, special sanction was to be solicited for the proposed transfer of such a tract to a new jurisdiction.

3. I am next to forward copies of a letter from the Commissioner of Umballa, No. 34 of 5th March 1864, and of the Financial Commissioner's reply, No. 679 of 10th March 1864. The result of that correspondence was a ruling with reference to six villages, which were on an island, and which had by the action of the river been transferred from the Umballa to the Hoshiárpur side of the Sutlej, that the sanction of the Local Government would be necessary to their incorporation with the Hoshiárpur district, and that for the present at any rate the transfer was unadvisable. The Financial Commissioner in giving this ruling referred to the above-noted correspondence of 1856, and seems to have thought the transfer unadvisable, partly because it was quite probable that the deep stream might again change its course, and partly because most of the villages belonged to Umballa Jágírdárs.

4. Government Notification, No. 344, of 6th March* 1869, declared the deep stream of the Sutlej the boundary between adjoining districts along the whole course of that river. When this notification issued the jurisdiction over the Umballa villages on the Hoshiárpur side of the deep stream ought to have been transferred to the latter district, but the local officers appear to have taken no notice of the notification, and the jurisdiction has remained with Umballa. Not only so, but from the reports lately received it seems that in other cases between Umballa and Hoshiárpur, and probably also between Ludhiána and the opposite districts of Hoshiárpur and Jullundur, parts of estates on one bank owned by zamíndárs residing on the opposite banh have remained in the jurisdiction of the district in which the village site is situated.

5. Mr. Lyall's attention was called to the subject by an entry in the Commissioner of Settlement and Agriculture's index of correspondence; he requested Major Wace to report on the subject, and I am now directed to submit in original his reply, No. 167 C. of 20th April 1882, with its enclosures. Major Wace, it will be seen, proposes to cancel the notification of March 1869, and in place of it to issue a notification defining the boundary between the adjacent districts as the boundary of ownership which divides the villages named in a schedule which would form part of the notification.

6. Mr. Lyall, before whom this letter was laid, held that it was now necessary either to insist upon the principle of the notification being carried out or to modify it. The present he considered to be a favourable time for action, as Hoshiárpur, Jullundur, Ludhiána and Umballa are all under settlement. He was in favor of the solution proposed by the Settlement Commissioner, and would apply it to the whole course of the Sutlej above its junction with the Beas, *i.e.*, where it flows between the Hoshiárpur and Jullundur districts on one side and the Umballa, Ludhiána, and Ferozepore districts on the other. He would leave notification No. 197 of February 6th, 1869, which refers to the Lahore and Ferozepore districts, to be reconsidered, if necessary, when the Ferozepore Settlement is taken in hand. The lists of villages on both sides required by the notification proposed by the Settlement Commissioner would be drawn up by the Settlement Officers and Deputy Commissioner of the districts concerned. These lists, Mr. Lyall thought, should be drawn up in the first place according to existing practice as to jurisdiction, but on the lists transfers should be proposed, when transfers appear desirable, according to the principles of the Settlement Commissioner's proposal. For example, if a village estate has been divided into two parts by the river, and in practice the jurisdiction, civil, revenue and criminal, has also been divided between the two districts by the deep-stream rule, each part becoming in fact as far as our records are concerned a separate mauzah, then proposals might be made on the list to transfer the jurisdiction of the smaller part to the district in which the larger part, or that containing the village site, is situated. On the other hand, if the jurisdiction of the whole estate has remained with the district to which it originally belonged, but the larger part or that part containing the village site is now situated on the other side of the deep stream, and seems

* Note—The correspondence which led to this notification will be found in a printed form in Selections from the Records of the Financial Commissioner's office, No. XXIV,—*See* Supplement to *Punjab Record*, March 1869.

likely to remain there, then a transfer of the whole estate to the district across the deep stream might be proposed, if no special reasons to the contrary (such as those which were held to be sufficient in the case of the Umballa village referred to in the correspondence of 1864) exist.

7. The Financial Commissioner, Mr. Lyall thought, might be allowed to pass orders as to any transfers proposed, subject to approval of Government, and the lists so amended might then be published with the notification. With the notification a Government order might also issue for guidance of District Officers in future proposals for transfer of jurisdiction of village estates from one district to another to the effect that such should not be made till the whole village estate, or the part containing the village site, is transferred by river action to the other side of the river.

Mr. Lyall considered that these proposals seemed to agree with the present rule in the North-Western Provinces (see Board's Circular No. 3—111-154 of 1880), copy annexed, except that there the deep stream of certain rivers seems to be the boundary exclusively so far only as criminal jurisdiction is concerned. He was, however, of opinion that in the Punjab the criminal might follow the civil and revenue jurisdiction, as it does at present, until there is proof that this is really unadvisable.

8. Mr. Lyall admitted that it might be objected to these proposals that by them we should be involved in the dilemma pointed out by Mr. J. W. Smyth, Deputy Commissioner, Lahore, in paragraphs 5 and 6 of his No. 544 of 17th December 1868 (printed in the selections already referred to). Mr. Smyth wrote with reference to the deep-stream boundary:

"It certainly has one advantage that, being easily determinable, there can be little doubt as to district jurisdiction or as to the authorities before whom claims to river land should be made; whereas if the district boundary is to follow the boundaries of villages, and if these boundaries are continually shifting, there is the greatest uncertainty as to jurisdiction. Before determining the district boundary it becomes necessary to determine the private rights in the lands, to see what villages they belong to, and yet how can those rights be determined until it is known what authorities have jurisdiction? In other words, before the district boundary can be fixed it is necessary to determine the village boundaries, and before the village boundaries can be authoritatively fixed in disputed cases it is necessary to know in what jurisdiction, that is in what district, the land is situated.

"This is the dilemma in which the authorities of the two districts are landed in cases where lands are claimed by different villages situated on different sides of the deep stream. The case referred to by Mr. Saunders is of this kind, and such cases must occur so long as the district boundary is held to follow the boundaries of river villages, and not strictly that of the deep stream."

9. Mr. Lyall thought that this dilemma might be avoided in the following way. In the case of claims to land preferred by two village estates belonging to two districts one on one side and one on the other of a river, the practice is for the revenue officers of the two districts to act in concert and summarily decide to which estate the land belongs. This practice might be considered to be authoritatively affirmed, and the Civil Courts might be instructed not to entertain a suit for such land until a summary order of the above kind had been passed by the revenue officers. If a petition of suit should in the first place be brought to the Civil Courts they should refer the petitioner to an application to the revenue authorities and should keep the suit pending until these had given a summary decision. The decision of the revenue authorities should be accepted by the Civil Courts as *primâ facie* determining the question of jurisdiction. If, however, the Civil Court in its decision reversed the order of the Revenue Courts, the latter would of course accept the decision and the land would then be transferred to the other district to which the parent village successful in the Civil Courts belonged.

10. If this view were accepted by His Honor the Lieutenant-Governor Mr. Lyall held that the best course of procedure would probably be for Government, in declaring under Act VI of 1867 the boundary between the opposite village named in the lists to be the boundary of the two districts, to add—

(1) that in case of dispute the Deputy Commissioners of the two districts would depute a revenue officer of each district to make a joint enquiry and to have the boundary relaid or determined by maps or plans where these exist and hold good, or by riparian law or custom; in case of disagreement of the two revenue officers, the decision to rest with the Deputy Commissioner on whose side of the deep stream the land lies;

(2) that if, after a disputed boundary had been thus summarily fixed, a civil suit was brought as to the ownership of the disputed land and a decree differing from the summary decision was given and upheld in appeal, then the Deputy Commissioners of the two districts would cause the boundary to be fixed or declared in accordance with the Civil Court's decision.

With a notification to this effect and an order by the Chief Court directing subordinate courts to refer persons presenting such claims in the first instance to the Revenue Courts for a summary fixing of boundaries, Mr. Lyall thought that the dilemma pointed out by Mr. J. W. Smyth might be avoided.

11. Mr. Lyall passed orders on this reference in May 1882, but under his instructions the issue of the letter was delayed pending reply (recently received) to a reference made by this office as to the exact boundaries of districts.

12. As Colonel Davies had doubts if the solution of the difficulty pointed out by Mr. Smyth in the quotation from his letter given above would be avoided by the plan proposed by Mr. Lyall, also whether that plan could be carried out in practice in the present state of the law, he sent the papers to the former officer unofficially for opinion. In his reply, Mr. Smyth writes as follows :—

"I quite agree that it is necessary that the revenue authorities should, for revenue purposes, annually after the rains fix the district and village boundaries summarily. But I do not think that a Civil Court could be required (as the law now stands) to defer adjudicating on a case or receiving a plaint till the boundaries had been summarily fixed by the revenue authorities. Moreover, when the suit is brought after the fixation of the district boundary by the revenue authorities it may happen that the land is adjudged by the court to belong to a village in a district over which the court has no jurisdiction; and in that case the proceedings would be void for want of jurisdiction. If the person out of possession then sues in that district, it may happen that the Courts may come to a different conclusion on the facts from that come to by the first Court and hold that the land belongs to the village in the other district; its decision thus being also void for want of jurisdiction. Of course conflicting decisions of this kind are not likely often to occur in practice, but the possibility of their occurring should be kept in view, and any plan fixed upon should provide for them.

The best plan of course would be to have express legislative provision on the point. A provision somewhat similar to that contained in Section 182 of the new Code of Criminal Procedure (X of 1882), which meets the difficulty so far as criminal cases are concerned, would answer, *viz.*, when it is uncertain in which of several local areas a suit should be tried, it may be by a court (otherwise competent) having jurisdiction over any one of such local areas. A provision to this effect might be inserted in the Punjab Courts Act (XVII of 1877), or in the Punjab Laws Act now under revision, or advantage

might be taken of the revision now in hand of the Land Revenue Act to deal with the whole subject of village and district boundaries and the questions of jurisdiction to which they give rise.

Meanwhile, until we get some legislative provision on the point, I think something can be done under our present law to get over the difficulty. I would under Section 9, Act XVII of 1877, invest some officers in each of the two districts with concurrent jurisdiction in the other district to try suits arising in river villages. Thus, as regards the Lahore and Ferozepore districts, the Deputy Commissioner and Judicial Assistant of Lahore, the Extra Assistant at Kasúr and the Tahsíldárs of Kasúr and Chunián, might be invested, respectively, with the powers of a Deputy Commissioner, of an Assistant Commissioner with full powers, and of a Tahsíldár with special powers, to try suits in the river pargannahs of the Ferozepore district; and similarly the corresponding officers in the Ferozeprore district might be invested with corresponding powers in the Kasúr and Chunián pargannahs of the Lahore district. It could be provided by rules for the distribution of work in what court a suit connected with a river village should be instituted. Ordinarily the suit would be instituted in a court of the district to which the land was declared to belong by the revenue authorities in their summary fixation of the boundary, or if brought before the boundary was fixed it would be brought in the district to which the land was declared to belong at the last fixation of the boundary. Then whether the boundary was correctly fixed or not would not much matter, as in either case the court trying the suit would have jurisdiction, and its proceedings would not be void. I agree with Colonel Wace and Mr. Lyall that the boundary between two districts separated by a river should be the boundaries of the villages abutting on the river. This, I think is, for many purposes, a better and more convenient boundary than the deep stream. I see no great difficulty in giving effect to it if the question of civil jurisdiction is got over, which I think it can be in the manner above indicated.

13. The Officiating Financial Commissioner, I am to say, entirely concurs in the views expressed in this extract. The suggestion contained in the latter portion of it for surmounting the difficulty as to jurisdiction is, he thinks, a very happy one, for it can be adopted at once without recourse being had to legislation. The question of how best to provide for the decisions of questions of this nature by special legislation can be considered later on. If the Government accepts the proposals made in this letter, arrangements will be made for giving effect to them.

No. 110, dated 17th March 1856.

From—Major J. Clarke, Offg. Commissioner and Superintendent, Lahore Division,
To—The Financial Commissioner for the Punjab.

I have the honor to submit the correspondence in original noted at the end of this letter, respecting the district boundaries of Zillahs Lahore and Ferozepore, the determination of which is urgently called for by the Settlement Officer of Lahore.

2. I myself can see no good reason for determining that the channel stream of a river whose course is constantly shifting should form a district boundary. I consider it would be much more judicious to fix a line not subject to the action of a river. I can make no specific proposal, but I state the principle.

3. If this were adopted, then the questions remaining for consideration would be simplified, and in my opinion the ordinary rule of "kach mach" or "secundri hudd" will resolve them satisfactorily.

4. It appears that Mr. Campbell's proposal is really an expedient to maintain a fixed boundary for a term of years on an artificial line.

5. I beg the correspondence transmitted may be returned after perusal.

Memo. of Correspondence sent up in original regarding the District Boundary of Zillahs Lahore and Ferozepore.

No.	From	To	No.	Date.	Abstract of contents.
1	Settlement Officer, Lahore.	Commissioner, Lahore.	18	10th November 1854.	Paragraphs 4 and 5. States that the rule on the Sutlej is, that the river is the boundary both of the property of individuals and of the district. Where islands exist the deepest channel is considered the river. Submits a sketch map of three islands on the Sutlej belonging to Kasúr. Considers the rule of "kach mach" to be the most practical and in accordance with the custom of the country. Proposes that the boundary between the two districts be defined by the deep-stream of the river, and the rights of property in the islands be determined by the provisions of Act XI of 1825. The islands in question will thus be transferred to Ferozepore.
2	Commissioner, Lahore.	Settlement Officer, Lahore.	573	23rd November 1854.	Paragraph 7. States that he agrees to his suggestions, and so does Financial Commissioner; but before taking any further steps has communicated with the Commissioner, Cis-Sutlej, and will inform him of his reply.
3	Ditto ...	Commissioner, Cis-Sutlej.	569	22nd November 1854.	Forwards extract (paragraphs 4 and 5) from letter No. 18, dated 10th November 1854, from Settlement Officer, Lahore, relative to the demarcation of the boundary between Lahore and Ferozepore. Requests his opinion on the subject, and states that himself and the Financial Commissioner have no objection to the Settlement Officer's proposal.
4	Commissioner, Cis-Sutlej.	Commissioner, Lahore.	2187	22nd December 1854.	In reply, forwards copy of a letter from the Deputy Commissioner, Ferozepore, suggesting that the course of the river be watched for another year before any alteration of jurisdiction be made, and conveying remarks on the three Sutlej islands.
5	Commissioner, Lahore.	Settlement Officer, Lahore.	8	7th January 1855.	Forwards copy of above, and requests reports on the points therein noticed.
6	Settlement Officer.	Commissioner, Lahore.	13	8th March 1855.	Submits the report called for, and states that his opinion in regard to the transfer of the islands to Zillah Ferozepore is still unchanged.
7	Commissioner, Lahore.	Settlement Officer.	218	27th April 1855.	In reply, states that though the general principle of "kach mach" is allowed, yet in this particular case it is desirable to meet the wishes of the Commissioner, Cis-Sutlej.
8	Deputy Surveyor-General.	Commissioner, Lahore.	2169	22nd November 1855.	Paragraphs 2 and 3. Not having received any map defining the true limit of the *entire* line of the Lahore District, and understanding from the Assistant Revenue Surveyor that the southern boundary on the River Sutlej is liable to a change, requests to know whether any changes are contemplated or likely to take place.
9	Commissioner, Lahore.	Settlement Officer.	532	8th December 1855.	Forwards copy of above letter. Calls for the information required by the Deputy Surveyor-General.
10	Settlement Officer.	Commissioner, Lahore.	62	28th December 1855.	In reply, states that, with reference to the wish expressed by the Commissioner, Cis-Sutlej, in the letter No. 2187, dated 22nd December 1854 (see No. 4 above), that another year should be allowed to elapse before changes of jurisdiction were made, he informed the Revenue Surveyor that changes were expected. Now that the deep stream of the Sutlej is still to the north of the islands in question proposes their transfer from the Lahore to Ferozepore District. Conveys further remarks on the islands.
11	Commissioner, Lahore.	Commissioner, Cis-Sutlej.	2	4th January 1856.	Forwards copy of above. Agrees with Mr. R. Egerton's proposal as regards the transfer of the islands, and requests he will have it carried out if there be no objection on his part.
12	Commissioner, Cis-Sutlej.	Commissioner, Lahore.	21	15th January 1856.	In reply, remarks, with reference to the changeable nature of the course of the river Sutlej, that if the rule of "kach mach" were maintained, continual transfers and retransfers of large tracts of country must be expected therefore suggests a reference once more of the question for a general and final decision.
13	Memo. by Mr. R. Egerton, Settlement Officer, Lahore, on the Sutlej boundary, dated 5th February 1856.				

No. 1691, dated 17th May 1856.

From—The Financial Commissioner, Punjab,

To—The Offg. Commissioner and Superintendent, Lahore Division.

I HAVE the honor to acknowledge the receipt of your letter No. 110, dated 17th March, with enclosures, which having been again made over to your office for preparation of an index to the letter, have been recently returned to me, and beg to reply as follows.

2. Mr. Egerton has not, I think, kept sufficiently in view the distinction between land which has been submerged and cut away, causing a corresponding deposit on the opposite bank or elsewhere, and land which has not been thus obliterated, but merely separated from lands to which it had previously been contiguous by the intervention of a stream.

3. In the former case, it is undoubtedly the usage to consider all land thus newly thrown up as belonging to the village with which it is in juxtaposition, and the rule of Kach Mach in such cases provides that all land on either side of the deep stream (wherever that may flow in the midst of the alluvion) shall belong to the villages on that side.

4. But in the latter case, that is, where land is merely separated by the intervention of a stream from that with which it has been previously connected, I know of no law or usage which could justify us in regarding a transfer of proprietary right as the result of such separation, and I feel sure that in every part of the Punjab, as elsewhere, any portion of a village so cut off continues to be regarded as an integral portion of that village, and that the principle enunciated in the letter of the Secretary, No. 918, dated 5th November 1855, quoted by Mr. Campbell, is applicable everywhere, *i.e.*, that every such portion of a village will appertain to the jurisdiction within which the most important part of it is situated.

5. As respects the general question of jurisdiction, to which the present discussion mainly refers, there can be no doubt in respect to the tracts lying along the Sutlej that where lands are newly recovered from under the bed of the river, so that their identity with any area previously existing cannot be established, the rule of Kach Mach should be followed, that is, that such lands up to the deepest channel of the river, where there may be more than one channel, will appertain, as regards both proprietorship and jurisdiction, to the adjacent territory on the same bank of the stream. This I am inclined to think will hold good every where more or less throughout the Punjab, but at all events along the Sutlej there can be no doubt upon the subject.

6. Where, however, the river changes its course in such a manner as to leave between its old and new channel a tract which remains unsubmerged, or which, at all events, does not become materially changed, and can be perfectly indentified, I quite agree with Mr. Campbell and yourself in thinking that so long as the tract in question remains an island, the fact of one of the channels being deeper than the other is comparatively unimportant, and that the inconvenience which would result, if the jurisdiction of such tract were to be changed with every alteration in the relative depth of the two streams, would be too great to be counterbalanced by any advantages which could result from adopting that measure.

7. I am clearly of opinion, therefore, that the jurisdiction of the villages to which this correspondence chiefly relates should not be altered until either one of the channels shall have entirely dried up, or serious inconvenience shall, from any other cause, have been found to result from the existing arrangements being maintained, when special sanction for the transfer should be solicited with reference to the particular grounds which appear to render it advisable.

8. Should the proceeding of the Survey Department as respects the preparation of the Lahore map be still delayed on account of the question now referred, I request that it may be at once adjusted in concordance with the above view of the matter. But I would observe that, as the map of Ferozepore has, I believe, been already completed, it seems most desirable,

should this be the fact, that the boundary of Lahore, as represented on the Lahore map, be made to correspond therewith, if this be possible, as it ought to be. Changes of boundary and jurisdiction must always be taking place where streams of a constantly fluctuating character have to be dealt with, and all that can be expected of a map in such a case is that it represent the state of things existing either at the time of survey, or at such other date as it may be determined to adopt for this purpose.

The original enclosures received from you are returned herewith.

No. 34, dated 5th March 1864.

From—The Commissioner and Superintendent, Umballa Division,
To—The Financial Commissioner, Punjab.

From Deputy Commissioner, Umballa, No. 56, dated 4th March.
To Deputy Commissioner, Umballa, No. 167, dated 5th March 1864.

I HAVE the honor to forward for your orders copy of correspondence as noted in the margin, regarding certain villages in the Umballa District subject to the action of the River Sutlej, and beg to state that I do not think the Deputy Commissioner of Hoshiárpur was right to send his officials into the villages in question without reference to higher authority.

No. 56, dated 4th March 1864.

From—The Deputy Commissioner, Umballa,
To—The Commissioner and Superintendent, Umballa Division.

WITH reference to your No. 59 of 3rd instant, I have the honor to request your instructions on the following point previous to submitting the Alluvion and Diluvion Statement.

The following villages :—

Name.		*Jama.*
Karkana Khurd jágír	Rs.	25
Rutunpur ,, ...	,,	83
Chúpki ,, ...	,,	9
Múllana ,, ...	,,	43
Gúrkewál ,, ...	,,	47
Nanúwál Khálsa	,,	72
Total ...	,,	279

have been separated from this district by the action of the River Sutlej. They are on an island, and the main body of the stream, previously on the Hoshiárpur side of the island, has now shifted to the Umballa side without much affecting the area or cultivation. In fact, the actual position of the villages is not changed.

2. The Deputy Commissioner of Hoshiárpur is of opinion that these villages have been transferred to his district by alluvion, and he wishes to incorporate them with his district, and has entered on them through his officials.

3. I am of opinion, in accordance with Major Busk, that there is no necessity for this transfer; the villages nearly all are jágír, and the jágírdárs would be put to considerable inconvenience by the transfer. I am also of opinion that if the transfer of several whole villages from the Umballa District to the Hoshiárpur District is proper, it should be done by a regular Government order in the *Gazette*, and that neither District Officer should strike them out or add them as alluvion and diluvion.

4. I would accordingly solicit your instructions as to whether I am authorized to enter these villages in the Diluvion Statement as lost, or whether they should be retained on the rent-roll of this district.

5. To the best of my recollection (but after a careful search I have been unable to find the correspondence) orders on the point were given by the Supreme Government with regard to what was determined to be an illegitimate transfer of villages between the Muzaffarnagar District, North-Western Provinces, and the Karnál District, Punjab, owing to the action of the Jumna. With reference to this particular island, the transfer and re-transfer will probably be a yearly matter if now allowed, as the island is high and not liable to inundation.

No. 167, dated 5th March 1864.

From—The Commissioner and Superintendent, Umballa Division,
To—The Deputy Commissioner, Umballa.

In reply to your letter No. 56, dated 4th March, regarding the Alluvion and Diluvion returns, I have the honor to state that, under the circumstances stated, I am of opinion that the transfer of the whole villages referred to to the Hoshiárpur District would be inconvenient to the people, and is not necessary for any Government purpose. But as there is a difference of opinion about it between you and the Deputy Commissioner of Hoshiárpur, I will refer the matter to the Financial Commissioner for orders; and meanwhile the villages may be entered conditionally at the foot of the Diluvion Statement.

No. 679, dated 10th March 1864.

From—The Financial Commissioner, Punjab,
To—The Commissioner and Superintendent, Umballa Division.

In reply to your letter No. 34, dated 5th current, I have the honor to refer you to my letter No. 1691, dated 17th May 1856, to the address of the Commissioner of Lahore, of which that officer doubtless supplied your predecessor with a copy; and as it appears from the enclosures of your letter that the tract of land which the Deputy Commissioner of Hoshiárpur proposes to transfer to his district from that of Umballa is an island, you will gather from paragraphs 6 and 7 of my letter above quoted that I concur with you in thinking the transfer should not take place for the present at all events.

2. No transfer can take place from one Lieutenant-Governor to another without sanction of the Supreme Government. In like manner no transfer can take place from district to district of the Punjab without sanction of the Punjab Government.

The Deputy Commissioner of Hoshiárpur therefore has no power summarily to take possession of the tract in question.

Copy of Book Circular No. 3—III—154, dated 21st October 1880.

Issues instructions for the guidance of officers in the application of the deep-stream rule.

As misapprehension exists on the subject, the Board with the sanction of Government, issue the following instructions regarding the application of the deep-strean rule in deciding the boundaries of districts.

2. The Government of India have decided that the deep-stream shall be the provincial boundary for civil, revenue and criminal purposes. Rules for verifying annually the boundary between these provinces and the provinces of Oudh and Bengal are contained in the Board's Book Circular No. 16, dated 12th August 1868 (E. C. Part I., page 73—III). The same rules are to be applied in deciding the boundary between these provinces and the Punjab.

3. By Notification No. 37 A.,* dated the 9th January 1874, the Local Government declared the deep-stream of the rivers Ganges, Gogra and Jumna to be the boundary between the districts within the North-Western Provinces named in the Notification, so far as the Criminal Courts are concerned.

*Published at page 165 of the *North Western Provinces Gazette* of the 17th January 1874.

4. Within the North-Western Provinces Civil and Revenue jurisdiction does not necessarily alter with a change in the deep-stream. The local limits

of the jurisdiction of Civil and Revenue Courts within the provinces are now determined by the Local Government under Section 14, Act XIX, 1873, and by Section 18, Act VI of 1871. The following extract from G. O. No. 401 A., dated the 20th February 1873, is published for the information of District Officers applying for sanction to the transfer of land from one district to another by reason of a change in the deep-stream :—

"No village lands should pass from the jurisdiction of one set of revenue officers to that of another by a change in the deep-stream, unless the village site itself is transferred, and in such a case, not merely the separated portion, but the whole mahal should go over to the district with which the portion on which the site stands has become incorporated."

No. 167 C., dated Camp, 20th April 1882.

From—Major E. G. Wace, Settlement Commissioner, Punjab,

To—The Settlement Secretary to Financial Commissioner, Punjab.

Settlement Officer, Hoshiárpur's No. 288, dated 23rd October 1880, and No. 333, dated 17th January 1881, and endorsement by Settlement Commissioner No. 110, dated 8th February 1881.
Settlement Officer, Jullundur's No. 235, dated 18th May 1881.
Settlement Officer, Ludhiána's No. 158, dated 8th September 1881, and No. 235, dated 19th November 1881.
Settlement Officer, Hoshiárpur's No. 14, dated 11th April 1882.

I have the honor to reply to your No. 2173, dated 30th March 1881, on the subject of the district boundaries on the River Sutlej between the districts of the Jullundur and Umballa Divisions. The correspondence noted in the margin is submitted herewith; and I further solicit a reference to the correspondence on the subject of the river boundary between the Lahore and Ferozepore Districts, printed in Selections from the records of the Financial Commissioner's office No. 5 of 1869, and to the Circular of the Board of Revenue, North-Western Provinces, No. III, dated 21st October 1880.

2. The custom which in the great majority of cases decides disputes concerning the ownership of alluvial lands in the bed of the Sutlej as between villages on the opposite banks is that known as the deep-stream rule. And this rule has consequently been accepted as the rule for deciding the district boundaries.

3. The difficulties out of which this correspondence has arisen seem to me to be due to the circumstance that the rule has been laid down in too absolute a form. All the officers consulted report that in respect of rights of ownership the deep-stream rule, though truly described as the prevailing custom, is not of invariable application.

4. Mr. Kensington's report shows that as between the villages of the Garhshankar tahsíl and those of the Rupar tahsíl on the banks of the Sutlej, the deep-stream rule is not followed as a general custom, and that most of the villages have fixed boundaries. This change (if it be a change from what was before customary, of which, however, I am not certain) has been brought about by a gradual but extensive change in the position of the main stream, and is the outcome of the disputes which consequently arose.

5. From what I observed while on tour in the Ludhiána District, and from cases recently before me, I am inclined to think that if the Settlement Officers of Jullundur and Ludhiána could have examined the circumstances of their own Sutlej villages as closely as Mr. Kensington was able to do, they would have found evidence of similar changes. There is an increasing tendency to assert that land has been changed from one side of the stream to another by avulsion; and inasmuch as our settlement papers now make the proof of such an assertion and the identification of the land much easier than it was at the commencement of our rule, there is an increasing willingness on the part of our courts to listen to a claim of this nature.

6. I came across one case near Ludhiána in which a village having gained a great deal of land by the receding of the main stream, and the village on the opposite bank having been completely destroyed, the Ludhiána village declined to take any more land, and allowed the destroyed village to establish itself on the Ludhiána bank.

7. To whatever extent the operation of the deep-stream rule in defining district boundaries involves the transferring of villages and their inhabitants from one jurisdiction to the other, it is unquestionably a source of serious inconvenience equally to the administration and to the people concerned. The transfer of records from one district office to another causes unnecessary and undesirable risk of valuable records. The land revenue settlement stands in spite of the transfer, though this is very likely overlooked. New police and chaukidari arrangements are necessitated. The relations, domestic, social and mercantile, of the people transferred with their old side of the river stand unaltered. And they are very really inconvenienced by being made over to new tahsíls and thánas.

8. Then, again, in all these cases in which a village having part of its land cut off by the main stream succeeds in maintaining its right to the part cut off under the existing application of the deep-stream rule as the district boundary, this part is created a new and separate estate. And this is a purely gratuitous and unnecessary complication of our records.

9. I believe that the most convenient solution of these difficulties is to define district boundaries on the Sutlej river in the same manner as they are defined when they do not follow any river. For example, take the case of the boundary between the Jullundur and Hoshiárpur Districts. It is defined by drawing up a list of the border villages of each district, and by saying that the boundary which divides the two districts is the same as that which divides these border estates. I do not mean that any notification can be referred to in which the boundary is so described; but as a matter of fact, that is the principle on which the boundary was laid out, by which it was surveyed, and with reference to which any dispute relating to jurisdiction would be decided.

10. I do not see that any difficulty or inconvenience would arise if the boundaries between districts lying on each side of the Sutlej river were similarly defined. I believe that the boundary between the Dera Gházi Khan and Muzaffargarh Districts, and between Muzaffargarh and Mooltan stands on this basis, as also does the boundary between the Jhelum and Shahpur Districts on the River Jhelum. In all these instances each alluvial village has its fixed boundaries, and it is known to belong either to the one district or to the other. Similarly, in the Bannu and Dera Ismail Khan Districts, the opposite banks of the Indus river belong to different tahsíl jurisdictions: the Indus alluvial villages have fixed boundaries, and each village is included either in the one tahsíl or in the other. I never heard it alleged that any administrative inconvenience is caused by these arrangements.

11. Under the solution thus suggested, so far as the deep-stream rule is really followed as a rule of ownership limiting the rights of the villages opposite to each other, it would still in fact remain the district boundary. But in so far now or hereafter as this rule of ownership may not be observed, there would be no conflict between the rule of ownership and the rule deciding the boundaries of jurisdictions.

12. To reduce the matter to a plain form, all that is required by my suggestion is a notification under Act VI of 1867 declaring that the boundary dividing districts A and B on the River Sutlej is the boundary of ownership which divides the following villages:—

Border Villages of District A.		Border Villages of District B.	
Tahsíl.	Name of Village.	Name of Village.	Tahsíl.

No. 288, dated Hoshiárpur 23rd October 1880.

From—Captain J. A. L. Montgomery, Settlement Officer, Hoshiárpur,
To—The Settlement Commissioner, Punjab.

I have the honor to enquire if the mere fact of a change of the course of the deep stream is a necessary reason for the transfer of villages from one district to another under Financial Commissioner's Book Circular No. VII, dated 17th April 1880.

2. The boundary between the Garhshankar tahsíl of this district and the Umballa District is the deep-stream of the Sutlej. By a change in the course of this stream 8 villages of the Umballa District are now on this side of the river. On enquiry from the Umballa District I find that 7 of these villages are assigned to jágírdárs who reside, and the rest of whose estates are situated, in the Umballa District. The Deputy Commissioner of Umballa thinks that the transfer of these villages would cause inconvenience, nor has the necessity for any change been established. In this view I am inclined to concur, more especially as it has not been customary hitherto to make such transfers between the districts on a change of the course of the stream.

3. I gather also from the wording of the Circular quoted above that it was issued rather to show by whom a transfer of this nature could be sanctioned than with a view to lay down a hard-and-fast rule regarding such transfers. I should be glad to receive your instruction on this subject.

No. 333, dated Hoshiárpur, 17th January 1881.

From—Captain J. A. L Montgomery, Settlement Officer, Hoshiárpur,
To—The Settlement Commissioner, Punjab.

In accordance with your No. 1570, dated 26th October 1880, I have the honor to forward a rough map showing the villages of the Umballa District which are now on the Hoshiárpur side of the deep-stream of the Sutlej.

2. Further enquiry has shown that there are 13 villages so situated. Mr. Kensington has been over the ground, and says that the change took place some 10 years ago. I also forward for perusal copies of correspondence on a question of the same kind in 1856 regarding the boundary between the Lahore and Ferozepore Districts. It was then laid down as a rule that even where the rule of "Kach Mach" is followed, the mere separation of lands by a turn of the river does not necessarily transfer the jurisdiction and property of that land.

3. The villages now in question have been brought on this side of the river by change of the course of the stream. The majority of them belong to jágírdárs of Umballa, and hitherto no inconvenience has been felt from their remaining in the Umballa District: on the contrary, the villages are averse to a transfer to this district.

4. Under these circumstances I hope no transfer will be considered necessary. The correspondence only arose on a question of the correct interpretation of Financial Commissioner's Book Circular No. VII, dated 17th April 1880.

Return of the enclosures is requested.

No. 110, dated 9th February 1881.

From—Lieutenant-Colonel E. G. Wace, Settlement Commissioner, Punjab,
To—The Settlement Officer, Hoshiárpur.

In reply to his No. 333, dated 17th January 1881, states that under the circumstances reported I do not think there is any necessity for a reference to a superior authority in the matter. The existing state of affairs is of 10 years standing and agrees with the principle, laid down in the Financial Commissioner's No. 1691, dated 17th May 1856, to the Commissioner of Lahore, for the decision of a similar case on the Sutlej river. Return enclosures.

No. 235, dated 18th May 1884.

From—W. E. Purser, Esquire, Settlement Officer, Rohtak,
To—The Commissioner of Settlements, Punjab.

In reply to your flying Circular No. 325, dated 15th ultimo, I have the honor to state that, in this district, the usual custom is that land gained by alluvion

becomes "shámilat-i-deh." The original proprietors lose their right to land lost by diluvion. As regards land lost and gained by avulsion, the original proprietors retain their rights. There are exceptions to the general rule, however.

2. As regards jurisdiction, the deep-stream is the boundary. I see no reason to alter this rule. But I understand that in cases of avulsion each case was to be considered on its merits as laid down in Secretary of State's despatch No. 3, dated 6th January 1861, (Montgomery Settlement Report, page 210). I have not the despatch, so cannot say whether it refers to districts or only to estates.

No. 158, dated 8th September 1881.

From—T. Gordon Walker, Esquire, Settlement Officer, Ludhiána,
To—The Settlement Commissioner, Punjab.

I have the honor to reply to your No. 235, dated 15th April 1881, enclosing a correspondence noted in the margin, that the custom of this district has hitherto been for the Tahsíldár to determine annually as soon as possible after the floods have subsided the boundary of the district in communication with the Tahsíldárs of Hoshiárpur and Jullundur Districts. This is done according to the deep-stream rule, and villages are frequently transferred from one district to another. This does not appear to give rise to any inconvenience: on the contrary, it is probably easier for the people not to have to cross the river. In the case referred to by Captain Montgomery inconvenience might be caused by cutting up a jágír, at all events to the jágírdár.

*1. Settlement Officer, Hoshiárpur's No. 288, dated 23rd October 1880, (original).
2. Ditto ditto No. 333, dated 17th January 1881, (original).
3. Settlement Commissioner's No. 110, dated 9th February 1881, (on reverse of No. 333).
4. Copy of Settlement Secretary to Financial Commissioner's No. 2173, dated 30th March 1881.

2. I am not prepared to express a final opinion as to the advisability of laying down fixed village boundaries, for I intended to take the subject up in the cold weather, and have not had time to go into it yet. But it appears to me scarcely possible with the existing custom as to proprietary right to do so. We cannot lay down the boundary of a village and say that land which comes to it by accretion beyond that boundary shall not belong to it. It is an everywhere recognized principle that all land coming by accretion (as distinguished from land coming by avulsion), that is land gradually added to a village and not recognizable, shall belong to that village; and we cannot by merely mapping out the boundary of a village take away this right of acquiring land by accretion. Under these circumstances I do not see any advantage in laying down village boundaries which would be perfectly arbitrary and not binding on any one. The letter quoted in the correspondence (No. 1691, dated 17th May 1856,) clearly recognizes the principle of accretion in paragraph 3; and in paragraph 7 the rule of the deep stream is maintained when there is only one stream.

3. I think, then, that where a whole village is concerned the present practice is the most convenient; and that villages should continue to be transferred from one district to another when such transfer is necessitated by a change in the course of the river; but it would be obviously inconvenient to split up a village into two parts, each being in a separate district. The present practice should be supplemented by the principle laid down in paragraph 4 of the letter of 1856 referred to above, that every *portion* of a village cut off by avulsion should appertain to the jurisdiction within which the most important part of it is situated (say within which the original village site lies). If it is necessary to have the notification amended for this purpose, I would suggest that it be done. But as far as I know there is no inconvenience in this district arising from the present practice; and I think it may well continue.

No. 235, dated 19th November 1881.

From—T. Gordon Walker, Esquire, Settlement Officer, Ludhiána,
To—The Settlement Commissioner, Punjab.

In continuation of this office. No. 158, dated 8th September last, I have the honor to state that I now find that in seven villages of Samrála which adjoin Umballa and are opposite to Hoshiárpur the custom entered in the wájib-ul-arz appears to be that of a fixed boundary, for the proprietors say that they own so

much land and that they will not claim beyond their "thákbast" boundary. There does not appear to have ever been a dispute in these villages, and the validity of the entry has therefore never been tested. In the whole of the other villages of the district the custom is that described by Mr. Lyall (in discussing the Alluvion Bill) as the modified form of the deep-stream rule (called here Dhár Kalán); that is land transferred intact or in a recognizable state from one side of the river to the other is recoverable; but otherwise the deep-stream of the Sutlej decides the boundary of the district and the proprietary right. In my former letter I spoke of this as the universal custom of the district, and it may be considered so, as the only exception is in the villages referred to above.

Unless that your own proposal of striking an average of the gains and losses of 12 or 20 years be adopted (and it would be rather difficult to work it out) the old custom must continue, and fixed boundaries are impossible.

No. 14, dated Hoshiárpur, 11th April 1882.

From—Captain J. A. L. MONTGOMERY, Settlement Officer, Hoshiárpur,

To—The Settlement Commissioner, Punjab.

THE Financial Commissioner, in his Settlement Secretary's No. 2113 S., dated 30th March 1881 (a copy of which was forwarded with your No. 325, dated 15th April 1881), requested that a report should be submitted as to whether it was advisable to alter the existing notification regarding district boundaries on the Sutlej river.

2. The Sutlej debouches from the hills in this district. As long as it is on the north-east of the Siwálik range it is confined between fairly stable banks, and is not subject to many fluctuations. After passing the Siwáliks at Rupar it spreads out into a much broader and more capacious stream. To the north-east of the Siwáliks both sides of the river for some 24 miles are included in the Hoshiárpur District, while for the remaining 12 miles the Umballa District lies on the south and east. After passing through the Siwáliks the river is continued as the boundary between this district on the one side, and Umballa and a small piece of Ludhiána on the other.

3. Mr. Kensington, Assistant Settlement Officer, has been engaged, during the last cold season, in deciding a number of very troublesome boundary disputes on the Sutlej, and I asked him to give me a report on the question referred by the Financial Commissioner. I beg herewith to forward his report, which is a very complete one, and although it deals principally with the river boundary of the Garhshankar tahsíl of the district it may be held to apply to that part of the Una tahsíl also which adjoins the Umballa District. There is not so much trouble with the boundary to the north-east of the Siwáliks, but the notification applies to the whole river, and any change that is made should apply to the whole of the Sutlej as far as it forms the boundary between this and other districts. In the few disputes that have occurred in the Una tahsíl the rule of the deep stream has been held to be the boundary between opposite villages. It is unnecessary for me to say more than that I agree in Mr. Kensington's conclusion, and should be very glad to see fixed boundaries laid down on the river.

Report of A. KENSINGTON, Esquire, Assistant Settlement Officer, regarding deep-stream of the Sutlej as the boundary between districts.

Act VI of 1867, Section 1, and Notification thereunder No. 344, dated 6th March 1869.

THE question has arisen how far it is expedient that the law by which the deep-stream has been declared to be the boundary for district jurisdiction for all villages throughout the course of the Sutlej should be modified with reference to both the actual facts of jurisdiction as at present enforced and also the law or custom governing proprietary right in the villages along the course of the river. The present report concerns so much of the Sutlej as passes through the Hoshiárpur District, and is submitted in reply to Settlement Commissioner's No. 325, dated 15th April 1881.

2. The Sutlej flows through parts of the Una and Garhshankar tahsíls of the Hoshiárpur District. In Una the villages on both sides are for the most part included in Hoshiárpur territory, and so far as that tahsíl is concerned the

question of district jurisdiction has little importance. In Garhshankar, however, the river forms for about 16 miles the boundary between the Hoshiárpur and parts of the Umballa and Ludhiána Districts.

3. The questions asked are—

(1) How far is it advisable that the present law fixing the deep-stream as the limit of district jurisdiction should be altered?

(2) What are the law and custom deciding questions of proprietary right in the boundary villages?

These two questions will be discussed separately.

4. *District jurisdiction.*—There is no doubt that, in the first instance, the deep-stream rule was a most necessary one in fixing the district boundaries. So long as the Sutlej was the boundary between British and independent territory the deep-stream was the only possible boundary which could be recognised without giving rise to frequent elements of dispute. After the annexation the rule was still a convenient one, though the necessity for its existence was gone. Questions of jurisdiction had not then assumed their present importance, and the materials were not easily available for determining any fixed boundary between the different districts. It is, however, now found that the strict observance of this rule involves a great deal of trouble, as necessitating the transfer of villages from one district to another with every change in the river's course, and for some 15 years at any rate the matter has been neglected. During these years the Sutlej has gradually shifted away from the Hoshiárpur District, and the result is that it has been now found that no less than 13 villages or parts of villages of the Umballa District are on the Hoshiárpur side of the deep-stream, though still included in the Umballa District rent-roll. It is this discovery and the determination not to transfer these villages to the Hoshiárpur District that has led to this report, the Financial Commissioner laying down in his Settlement Secretary's No. 2173, dated 30th March 1881, to Settlement Commissioner, that the transfer would be unnecessary and inadvisable, but that enquiry should be made how far it is expedient to alter the existing law in view of existing facts.

5. The sole argument in favour of the deep-stream is that it is a natural boundary, easily identified at any time in case of dispute. To make it an effective boundary, however, it is essential that the villages on both sides should agree that their proprietary rights should be similarly limited, and also that the Revenue authorities should observe the rule with the greatest care in the annual enquiries into gain or loss by river action. As to the first point, it will be pointed out later on that the villages in question are very far from recognising the deep stream as their boundary, while the existing facts prove that the Revenue authorities have not observed the rule for many years; and so long as alluvion enquiry is unsystematic and made independently by officials on both sides of the river, there is not much ground for supposing that the rule will be much better kept in future if now given a fresh sanction.

6. The question resolves itself to this. Is the theoretical gain of a natural boundary a fair equivalent for the proved practical inconvenience of a rule necessitating frequent territorial transfers between different districts? My own opinion is very decidedly in favour of cancelling the deep-stream rule altogether and definitely fixing district and village boundaries once for all. I think that the supposed importance of a natural boundary is in itself fictitious. District boundaries must be in great measure arbitrary; and so long as the boundary is definitely fixed in the first instance beyond the possibility of dispute, no great inconvenience arises from having a part of the district on the far side of the river. It has been abundantly proved that the deep-stream rule is a distinctly bad one so far as village proprietary right is concerned, and I think that every encouragement to the rule should be taken away. In the present instance, if the deep stream is asserted as the district boundary, it will be difficult to prevent interested villages from claiming corresponding proprietary rights; and however little their eventual success might be in the law courts, it is reasonable to expect that the decisions would be occasionally wanting both in natural justice and consistency. It is at any rate impossible to read the judgments of civil courts in similar cases

See Punjab Customary Law, Vol. III, 153-163.

already decided in this tract without coming to this conclusion. I have also to point out that the determination of the deep-stream as a fact is by no means always easy. For many years there were two main branches of the Sutlej in this tract, the deeper stream flowing sometimes in one direction and sometimes in the other. If then the present law is upheld, and if, as is very probable, a similar dividing of the river should again take place, the question of district jurisdiction will be as much in dispute as ever, and the one advantage of a natural boundary will cease.

7. Supposing it to be determined to cancel the deep-stream rule, the question then arises how would the boundary of district jurisdiction be now fixed. Before this question can be answered, however, the present condition of things as to proprietary right must be explained. During the present winter I have enquired into the existing facts, and to some extent also into the claims asserted by different villages along the river, and find that that these villages fall under three classes:—

(1). *Villages owning lands on both sides of the river and paying revenue into the tahsíls of different districts in varying proportions according to the course of the river in different years.*—In this case the deep-stream has been recognised as the boundary of district jurisdiction, but the proprietors themselves claim that their rights are regulated by "Urár pár." The river is in point of fact running through the village, and until the whole of the land on one side or the other is carried away the question of deep-stream is not in issue between these proprietors and other villages, and if the boundary is now fixed definitely, deep-stream rights will not have to be investigated at all. The two divided village areas, with the intervening river, will be mapped as one village, and the only question will be whether the entire village so formed is to be included in the one district or the other. This question is easily decided and has no real importance.

(2). *Villages which have been awarded the deep-stream as the boundary for proprietary right by judicial decision, or which now assert a claim to it.*—It is not clear whether this rule has ever been considered by the villagers in general to be the one by which their river gain and loss is regulated, but in one case at least it has been upheld by the Civil Court of the Umballa Division. The practical effect of this decree has been a very large accession of land to Hassanpur, and in awarding a fixed boundary now some difficulty would be found in adjusting the claims of villages on both sides fairly. The Umballa villagers will very reasonably object to dividing the existing river-bed, as the course of the deep-stream has been so far unfavorable to them. There are also three other villages at least in Hoshiárpur territory which claim the deep-stream, the matter not having yet come in issue in a civil case.

Hasanpur (Garhshankar) *versus* Malewál (Rúpar); claim 305 bigas,—decree, dated 5th November 1870.

Nanowal.
Tandi.
Asron.

(3). *Villages admitting a fixed boundary as at present laid down.*—The river in the case of all these villages have gone far away from the original Hoshiárpur bank, and the question of rights in the old river-bed has therefore been decided before this in some form or other. Many of the villages have fixed their own boundary without dispute. Others have brought their claims into court and the boundaries have been fixed by judicial decree. Others again have gone on disputing until this winter, and have had their boundary laid down as far as possible in accordance with these decrees in a joint proceeding by the Assistant Commissioner, Rúpar, and myself. The essential element of the judicial decisions in these cases has been that the deep stream is not upheld.

(1) Nanowál (Rúpar) *versus* Barámad Rail (Garhshankar),—decree, dated 4th December 1874.
(2) Bara Phúl (Rúpar) *versus* Rail (Garhshankar,)—decree, dated 23rd December 1872.

The orders passed were conflicting and the decrees took years to execute; but definite boundaries have now been laid down, and further enquiry will not be needed.

8. To sum up, the position of things along the whole course of the river is as follows :—

DISTRICTS.	VILLAGES.	DISTRICT.	VILLAGES.	CUSTOM.
Ludhiána	Sikandarpur	Hoshiárpur	Sikandarpur ...	Urár pár.
	Kamálpur		Kamálpur	Ditto.
	Shergarh		Shergarh	Ditto.
	Núrpur...		Núrpur	Ditto.
	Sherpur		Tandi	Dispute—Hoshiárpur claims deep stream.
	Ditto		Nanowál	Ditto ditto.
	Phassa		Phassa	Urár pár.
	Sarangpur		Sarangpur Panjbeda	Dispute—Rájpúts claim Urár pár.
	(Rájpúts)		Játs and Rájpúts ...	Dispute—Jats claim deep-stream.
	Mukowál		Darya Barámad Paragpur.	Urár pár.
Umballa	Sultánpur		Ditto	Ditto.
	Muléna...		Ditto	Ditto.
	Malewál		Hasanpur	Deep-stream awarded by judicial decision.
	(Not known)		Ghurka	Urár pár.
	Zindpur and many others		Tajowál	No dispute; fixed boundary.
	Chupki...		Barámad Rail ...	Dispute—decided summarily by Assistant Commissioner, Rúpar, and Assistant Settlement Officer, Hoshiárpur, 20th February 1882.
	Ratarpur		Ditto	Ditto ditto.
	Nanowál		Ditto	Boundary fixed by civil decree.
	Phul Kalán		Ditto	Ditto ditto.
	Ditto		Rail...	Boundary agreement dated 20th February 1882.
	Gurdáspur		Asron	Dispute—decided summarily on 20th February 1882 Asron objecting.
	Haveli		Ditto	Ditto ditto.

Throughout a great part of this tract the deep-stream has been long given up as the boundary of district jurisdiction. Where it is still observed the rule has inconveniences. Estates which are really one, have to be divided according to the course of the river even although the variation in position is caused by a sudden bend of the river (*ruk gardhni* or *chakar darya*), and not by gradual diluvion. I, therefore, propose that the rule be given up altogether, and that both the districts and villages be given fixed boundaries. In the majority of villages the boundary has been already fixed in one way or another, and there will be comparatively few disputes to adjudicate on. In the case of the pairs of villages owned by the same proprietors a final transfer will have to be made to one district or the other of one village in each pair. In all other cases the villages will remain in the district in which they now are.

9. The Financial Commissioner has requested that the law as well as the custom of proprietary right may be ascertained and stated. So far as I am aware, the Alluvion Act not having been yet passed, the law is contained in Bengal Regulation XI of 1825, extended to the Punjab by the Punjab Laws Act, Section 3. The general effect of this Regulation is that sudden bends in the river make no alteration in proprietary right, and that gradual alluvion shall benefit a proprietary body to the limit of their original permanent estate, but not beyond that, unless in case of a definite local usage to the contrary. I do not consider that there is any such proved custom in the present case throughout the tract as a whole, and there is, therefore, no obstacle in law to the determination of fixed boundaries for the villages. The deep-stream rule has been asserted in individual cases only, and not by the great part of the villages; and in these individual cases the claim has, so far as I know, been allowed in one instance only. Speaking generally, I do not believe that the villagers would ever have said anything about the deep-stream if it had not been suggested to them by our lower revenue officials.

Regulation XI, 1825, Section 4 (1) and Section 2.

No. 693, dated Lahore, 22nd June 1885.

From—R. G. Thomson, Esquire, Officiating Senior Secretary to Financial Commissioner, Punjab.
To—The Officiating Junior Secretary to Government, Punjab.

I am directed to inquire if orders can be passed on the reference made in this office letter No. 1471, dated 20th December 1883, on the subject of the boundary between the Hoshiárpur and Jullundur Districts on the one side and the Umballa and Ludhiána Districts on other side of the river Sutlej, as there is no doubt, Colonel Wace thinks, that the question of district boundaries on the Sutlej is in an unsound condition.

No. 489, dated Lahore, 7th July 1885.

From—W. R. Lawrence, Esquire, Under Secretary to Government, Punjab, Revenue Department.
To—The Officiating Senior Secretary to Financial Commissioner, Punjab.

I am directed to acknowledge the receipt of your letter No. 693 of the 22nd June 1885, enquiring if orders can be passed on the reference made in your office letter No. 1471 of the 20th December 1883, on the subject of the boundary between the Hoshiárpur and Jullundur Districts on the one side and the Umballa and Ludhiána Districts on the other side of the river Sutlej, and in reply, I am to say that His Honor does not wish to move further in the matter or to issue any specific orders in the case.

2. The letter No. 1471 of the 20th December 1883 should be removed from the list of unanswered references.

No. 295, dated Lahore, 5th April 1886.

From—J. Wilson, Esquire, Officiating Senior Secretary to Financial Commissioner, Punjab.
To—The Officiating Junior Secretary to Government, Punjab.

In Under-Secretary's No. 489, dated 7th July 1885, the Financial Commissioner was informed of the Lieutenant-Governor's decision not to move further in the matter of district boundaries on the Sutlej, referred for orders in this office No. 1471, dated 20th December 1883. That decision was arrived at before it was decided to revise the Land Revenue Act, and now that a Bill is about to be introduced into the Legislative Council for this purpose, the Financial Commissioner hopes that the opportunity will be taken to deal with the subject of district boundaries in riverain lands and the questions of jurisdiction which arise in connection therewith. A section on this subject might appropriately have been introduced in the Punjab Courts Act, XVIII of 1884, but seeing that the question concerns the Revenue Administration at least as much as the Civil Courts, the Financial Commissioner trusts that it will not be thought out of place in the Land Revenue Act.

Colonel W. G. Davies, C.S.I.

2. Some of the difficulties which arise from the present state of the law were prescribed in this office letter already referred to, and as a further

instance of the uncertainty at present constantly recurring regarding riverain boundaries of districts, I am directed to enclose in original the correspondence noted in the margin on the subject of the boundary between the districts of Shahpur and Gujránwála affected by the action of the Chenáb river. At present all suits and proceedings relating to the alluvial lands on the border between two districts have a very uncertain foundation, the jurisdiction of the Courts being as unstable as the sand of the river itself, and a perfectly honest claim may fail of success merely by reason of a sudden change in the stream, or a defendant may succeed in repelling a claim in the courts of one district, only to find himself attacked again in the other district. It is moreover by no means uncommon for the same alluvial lands to be assessed with land revenue in both the adjoining districts.

Commissioner, Ráwalpindi, to Financial Commissioner, No. 610, dated 12th September 1885, with enclosures.
Financial Commissioner, to Commissioner, Ráwalpindi, No. 8539, dated 15th December 1885.

3. The proposal made in paragraph 13 of this office No. 1471, dated 20th December 1883, was intended to do something towards putting an end to this uncertainty of jurisdiction without having recourse to legislation; but both Financial Commissioners concur in strongly recommending that the present opportunity should be taken of putting the matter finally upon a satisfactory basis by introducing into the Land Revenue Bill a section on the lines of Section 182 of the Criminal Procedure Code; and I am to submit for approval the following draft section which the Financial Commissioner believes will be sufficient for the purpose :—

"When in any suit or proceeding relating to any land which has been subject to river action, it is uncertain which of two Civil or Revenue Courts, or which of two Revenue Officers has jurisdiction, such suit may be heard, or proceeding may be held, by either of the Courts or Officers having jurisdiction over the land adjacent thereto."

4. I am to add that, in the opinion of both Colonel Davies and Lieutenant-Colonel Wace, the existing condition of di-alluvial customs is very unsatisfactory in other respects also, and when a convenient opportunity occurs, proposals will be made with a view to the termination of the fluctuations of proprietary and other rights in alluvial lands, which are chiefly due to the survival from times of violence of the barbarous *Hadd Sikandri* or deep-stream rule. Meanwhile the Financial Commissioner trusts that the proposal now made will be accepted as a step in the right direction. The change advocated will affect no private interests adversely, and will remove a serious blot in our administration.

No. 610, dated 12th September 1885.

From—H. E. Perkins, Esquire, Commissioner and Superintendent, Ráwalpindi Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

The correspondence quoted in the margin, forwarded in original, shows a divergence of views between the Deputy Commissioners of Shahpur and Gujránwála touching the rule to be applied in determining the riverain boundary between their two districts. Parts of the lands of 12 villages have been transferred bodily and in a recognizable form from the former to the latter district. Both the District Officers are agreed that the deep-stream rule which the Shahpur Settlement Report lays down as the governing rule is a bad one. Moreover it appears that it has not been always acted on, and in the case of mauza Takht Hazára, Mr. Gardiner shows it to work positive hardship, but he does not see his way to alter the rule, particularly as Major Nisbet, Officiating Commissioner, in the case quoted in the margin, and forwarded herewith, held recently that the rules must be applied; while Mr. Silcock, on grounds of expediency and former frequent non-observance of the rule, is disposed to ignore it, and to follow the frequent usage.

From Deputy Commissioner, Shahpur, No. 295, dated 17th July last, with original enclosures.
From Deputy Commissioner, Shahpur, No. 71, dated 3rd March.
Commissioner's reply No. 971, dated 12th idem.
Deputy Commissioner's No. 294, dated 17th July.
Deputy Commissioner's No. 366, dated 5th current.

Phiada and others *versus* Gahna and others, all of mauza Abbal in the Shahpur district.

2. I apprehend that Mr. Gardiner is technically right, and that the subject is rendered the more important by the near approach of a second Regular Settlement of the Shahpur District. The orders of the Financial Commissioner seem to be required as to whether a universally condemned rule is or is not to be enforced. A decision on the point by myself is precluded, if for no other reason, by the fact of the case having been so lately decided by my *locum tenens* in regard to one of the villages concerned.

3. The Deputy Commissioner's reference concerning Takht Hazára will be no doubt also disposed of by the orders which may be passed on the present communication. Your office No. 5432, dated 7th September 1869, is the order which was circulated by my office letter of November 1869, which he quotes.

No. 295, dated 17th July 1885.

From—J. W. GARDINER, Esquire, Deputy Commissioner, Shahpur,

To—The Commissioner and Superintendent, Ráwalpindi Division.

I HAVE the honor to submit the correspondence marginally noted between the Deputy Commissioner, Gujránwála, and myself, regarding the treatment of alluvion and diluvion on the Chenab, and to suggest that the matter be referred to the Financial Commissioner for orders. The question at all events is an interesting one.

(1) Deputy Commissioner, Shahpur's No. 720, dated 29th September 1884.
(2) Deputy Commissioner, Gujránwála's No. 840, dated 7th October 1884.
(3) Deputy Commissioner, Gujránwála's No. 880, dated 25th October 1884.
(4) Deputy Commissioner, Shahpur's No. 934, dated 2nd December 1884.
(5) Deputy Commissioner, Shahpur's No. 304, dated 2nd April 1885.
(6) Deputy Commissioner, Gujránwála's No. 434, dated 13th April 1885.
(7) Deputy Commissioner, Shahpur's No. 427, dated 4th May 1885.
(8) Deputy Commissioner, Gujránwála's No. 545, dated 8th May 1885.
(9) Deputy Commissioner, Gujránwála's No. 601, dated 18th May 1885.

2. I have been in doubt as to whether I ought to submit the matter in the shape of a complete report, or, as I am actually doing, by submission of the correspondence in original, and I have adopted the latter alternative, not so much to save myself trouble, as because the correspondence shows exactly how the question originated, and if I wrote a memorandum, I could do little more than copy out what Messrs. Trafford and Silcock have written, and repeat what I myself wrote to them.

3. As explained in paragraph 4 of my No. 720, dated 29th September 1884, the case began by a vernacular rubakár from Mr. Trafford asking me to send him the village papers connected with certain lands which had been transferred by avulsion from the right to the left bank of the Chenab.

4. The correspondence referred to in paragraph 4 of my No. 304, dated 2nd April last, related to a particular case, where there was some doubt expressed as to where the deep stream actually ran. It is unnecessary to trouble you with its details.

5. There seems to be no doubt that the rule propounded by Mr. Silcock in the second part of paragraph 3 of his No. 434, dated 13th April last, has been hitherto followed on the Chenab in this district, and that it commends itself entirely to the zamíndárs of the riverside villages. In paragraph 12 of my first letter in the case of Takht Hazára, regarding which I am addressing you in my No. 294 of to-day's date, I have given an instance where the rule presses hardly. But I think it is also equally clear that the practice which Mr. Silcock would wish to re-introduce is opposed to the law as it stands at present, and therefore I suggest that the matter be referred to the Financial Commissioner for orders.

No. 720, dated 29th September 1884.

From—J. W. GARDINER, Esquire, Deputy Commissioner, Shahpur,

To—The Deputy Commissioner, Gujránwála.

In re alluvion and diluvion in the following villages :—

District Gujránwála.		*District Shahpur.*
Mallakánwála	...	Burj Ghulám Rasúl. Hazára. Násirpur Khurd.

District Gujránwála		*District Shahpur.*
Channi Sultan Shah		Abal.
Burj Gháuns	...	Chak Abal. Moriwál.
Burj Futtu	...	Nalti. Badar. Burj Dáim.
Garbi Anderún	..	Dullewála. Kot Nawan.

With reference to your vernacular rubakárs, dated 21st May last, regarding the villages above-mentioned, I have the honor to remark that the Tahsíldár of Bhera reports that it has never been the custom to transfer from this district to yours lands which have been transferred by avulsion from the right to the left bank of the Chenab, and this assertion is, to a certain extent, corroborated by the passage in paragraph 312 of the Settlement Report of this district, which I proceed to quote:—"On the Chenab, on the other hand, enquiry showed that in such cases the usage known as the 'Sikandri hadd' law has always prevailed. This rule is precisely that prescribed for observance in Sections IV and V of Regulation XI of 1825, *viz.*, that where land is gained by gradual accession, it shall be considered an increment to the estate to whose land it is thus annexed, but not when the river by a sudden change of course transfers a portion of land from one estate to another, without destroying the identity of the land so removed." This seems to say that land transferred by avulsion does not become an increment to the estate to whose land it is annexed.

2. Moreover, and this is the point to which I chiefly wish to draw your attention, the usage called "hadd sikandri" appears to have no application to the question now under consideration, which is whether land transferred by avulsion from the right to the left bank of the Chenab should be considered as still part of the Shahpur district or as transferred to Gujránwála. The "hadd sikandri" custom, as I understand it, applies only to proprietary and other subordinate rights, and it seems that we are all agreed that land transferred by avulsion from the right to the left bank of the Chenab remains the property of the zamíndárs to whom it belonged when it was on this side of the river.

3. The question for decision appears to be, what is the boundary between our two districts? and in paragraph 22 of my Settlement Report I read: "For 25 miles the Chenab forms the boundary between this district and Gujránwála." As I know of no order overruling this dictum, I accept it as conclusive, and by the Chenab forming the boundary I understand that the deep stream is meant. It is of course quite intelligible that the zamíndárs of a village on this side of the river do not like a piece of land to be considered as forming part of a village with which they have perhaps nothing in common; but this is entirely a matter for Government to decide, and the zamíndárs have no right to complain, provided their proprietary and other rights are maintained. In extreme cases you would, I presume, propose that the land gained by avulsion be formed into a separate mauza.

4. I am therefore prepared to comply with your request to send you copies of the shajrahs and khasrahs of land transferred by avulsion from the right to the left bank of the Chenab, but before doing so I think it right to send you the above remarks, and to request your adhesion to the proposition that the matter has no connection with the custom of "hadd sikandri," but depends on the boundary fixed by Government between our districts.

No. 840, dated 7th October 1884.

From—R. W. Trafford, Esquire, Deputy Commissioner, Gujránwála,

To—The Deputy Commissioner, Shahpur.

In reply to your letter No. 720, dated 29th September 1884, as far as I can judge, the question of proprietary will be a matter for decision according to the agreement drawn up at the Settlement of 1868 to regulate the boundary of the villages on the Chenab affected by alluvion or diluvion. The record in this office is so signed by the lambardárs of the different villages.

How far the facts of this case bring it under one or other of the rules I am not in a position to state positively, that is, I am not prepared either

to admit or to deny that the cases are governed by the so-called "hadd sikandri" rule. All that I understand is that, for the purposes of revenue administration, certain blocks of land have been transferred by the action of the river from the Shahpur to the Gujránwála district, and that being the case, the transfer of the necessary papers or other copies of them is solicited.

Your complying with this request will not be understood to imply any opinion as to the proprietary rights, nor to commit me to any opinion either.

No. 880, dated 25th October 1884.

From—R. W. Trafford, Esquire, Deputy Commissioner, Gujránwála,

To—The Deputy Commissioner, Shahpur.

Calls attention to his letter asking for the village maps, &c., of—

(1) Miana Hazára,
(2) Hariwál,
(3) Abdul Chak,
(4) Dowbewala,
(5) Kot Nawa,
(6) Mauza Awal,
(7) Burj Daim,
(8) Chak Saida,
(9) Tibba Kalán,
(10) Burj Ghulám Rasúl,
(11) Qilla Hazára.

and requests that the papers called for may be sent with as little delay as possible.

No. 934, dated 2nd December 1884.

From—J. W. Gardiner, Deputy Commissioner, Shahpur,

To—The Deputy Commissioner, Gujránwála.

With reference to his docket No. 880, dated 25th October last, has the honor to send the village maps wanted by him.

No. 304, dated 2nd April 1885.

From—J. W. Gardiner, Esquire, Deputy Commissioner, Shahpur,

To—The Deputy Commissioner, Gujrnáwála.

Referring to the correspondence ending with my No. 934, dated 2nd December last, I consider it right to inform you that on my recent tour along the right bank of the Chenab I ascertained, as a matter of fact, that it has not been the practice of late years to consider as necessarily transferred from one district to the other lands which have been transferred by avulsion from one bank of the Chenab to the other, nor to accept the deep stream as, as a matter of course, the boundary between the two districts. For instance, on a large island I found that the accepted boundary between our districts was a line running down (approximately) the centre of the island and not the stream on either side. The zamíndárs of this district also claimed that all land of which they could claim the proprietary right, include land which had been transferred to the opposite side of the river by a sudden change of the deep stream should be included in their mauzas and that each mauza as a whole should belong to one district or the other, and this seems in effect to have been the practice hitherto. If I had understood all this before I wrote my No. 720, dated 29th September last, I should have hesitated about complying with your request without representing the matter to the Commissioner and taking his orders on it; for it seems doubtful whether it is expedient to change a practice which has been followed with the approval of the zamíndárs on both banks and which has some advantages over that which your predecessor, Mr. Trafford, introduced last year. Of course if the practice is illegal, it must be either abolished or legalized, but it seems possible that the latter course may be preferable, especially as this district is so soon to come under Settlement.

2. And even now if you should consider it advisable I should be prepared to join you in representing the matter to the Commissioner for his consideration and orders; but before taking such action it would probably be

advisable *to ascertain* what practice prevails on the Chenab where it flows between your district and Jhelum, and of this I have no knowledge.

3. *It is needless* to add that in writing the above I have borne in mind the correspondence ending with your No. 379, dated 27th ultimo.

No. 434, dated 13th April 1885.

From—J. G. Silcock, Esquire, Deputy Commissioner, Gujránwála,
To—The Deputy Commissioner, Shahpur.

With reference to your No. 304, dated 2nd April, and previous correspondence on the question of the boundaries of our two districts for the purposes of alluvion and diluvion, I have the honor to state that I cannot find any established practice to have existed in this district. No authoritative directions exist, and apparently such matters have hitherto been settled according to the special circumstances of each case, and by agreement between the two Deputy Commissioners.

2. I would propose that matters continue as before, and that there is no necessity for referring any question to the Commissioner until we should happen to disagree on the rule to be applied.

3. My opinion is very strongly that the deep-stream boundary is a very unsatisfactory one, and that if adhered to, there would be a constant succession of difficult cases arising. For ordinary alluvion the deep-stream may be considered satisfactory, *i.e.*, that land thrown up by river action belongs to the village on whose borders it is thrown up, and therefore to the district to which that village belongs. Land transferred unchanged by avulsion through a change in the course of the deep-stream (which change may be only temporary), should I think, remain attached to the village and the district to which it belongs in proprietary right. No such land should, I consider, be transferred from one district to the other until or unless so much of the village has been so transferred that it is necessary to transfer the village bodily to the other district. These are the rules ordinarily in force, and I propose that they should govern the relations of the two districts in future, and if you agree, I see no reason for referring any matter to the Commissioner.

No. 427, dated 4th May 1885.

From—J. W. Gardiner, Esquire, Deputy Commissioner, Shahpur,
To—The Deputy Commissioner, Gujránwála.

In reply to your No. 434, dated 14th ultimo, I have the honor to state that I agree with you in thinking that the rule you describe in your paragraph 3 is the best that can be applied in the case of the Chenab, but I have never heard of such a rule being in force anywhere, while the deep-stream boundary is, I believe, not infrequently followed; and I don't think the latter could be condemned on the ground that a constant succession of difficult cases would be likely to arise. Of course it might happen that the Deputy Commissioners of the two districts would be unable to agree as to where the deep-stream ran, and it is conceivable that the Civil Courts might try the question in a case, and come to a different conclusion from that arrived at by the Revenue authorities, but ordinarily the Tahsíldárs should be able to settle this point on their annual inspection of alluvion and diluvion.

2. But however this may be, it seems to me that you and I have no right to decide as we think best where the boundary between our districts is to run, and no such decision of ours would be binding on Civil, Criminal, or even Revenue Courts. According to the Shahpur Settlement Report *the Chenab*, i.e., the deep-stream, is the boundary, and the present correspondence arose by your predecessor, Mr. Trafford, claiming to enforce the same rule. Therefore, I take it, the only authorized rule at present existing is the deep-stream boundary, and without a reference to higher authority I cannot take upon myself to alter it in any way whatever. But I am quite ready to refer the matter, and as the settlement of the Shahpur District is expected to commence shortly, I think this is a very good time to make the reference.

3. I may note that on the 23rd ultimo the Commissioner quashed some proceedings of mine regarding the partition of land formerly part of Mauza Abal in this district, but which has been transferred by river action to the left bank of the Chenab, and referred the persons claiming partition to you.

No. 545, dated 8th May 1885.

From—J. G. Silcock, Esquire, Deputy Commissioner, Gujránwála,
To—The Deputy Commissioner, Shahpur.

Under the circumstances as stated in your letter No. 427, dated 4th instant, I have no objection to the matter being referred to the Commissioner for the issue of definite orders.

As we are in agreement as to the best rule to be followed, and as you know much more about the circumstances than I do, I should be glad if you would refer the matter.

No. 601, dated 18th May 1885.

From—J. G. Silcock, Esquire, Deputy Commissioner, Gujránwála,
To—The Deputy Commissioner, Shahpur.

With reference to previous correspondence regarding the river boundary of the two districts, I have the honor to inform you that I have to-day given orders to enter on the registers of this district the lands of the twelve villages of your district that have been by river action transferred to this side of the Chenab. The total jama to be realized is Rs. 914, which differs from the figures supplied by you.

2 Considering that you are referring the whole question of these transfers and re-transfers to the Commissioner, I should not have given this order were it not that it appears from the vernacular files that you have removed these lands from your registers, and that being so, it was necessary that the lands should be shown somewhere, especially as the kharíf instalment has not yet been realized.

No. 71, dated Shahpur, the 3rd March 1885.

From—J. W. Gardiner, Esquire, Deputy Commissioner, Shahpur,

To—The Commissioner and Superintendent, Ráwalpindi Division.

I have the honor to request instructions as to what assessment should be made under the alluvion and diluvion rules on the village of Takht Hazára (*alias* Hazára Kalán), a Chenab riverside village, for the current year.

2. At settlement the culturable area of this village was acres 1,250, and the revenue assessed on it Rs. 593.

3. In this village it is the rule to disregard any increase or decrease which falls short of 10 per cent. upon the culturable area, or rather of 10 per cent. on the revenue ; for the calculation seems always to be made on the revenue.

4. The last time previous to the present year that the assessment of this village was altered was some years ago, when the culturable area was found to be acres 1,589, and Rs. 753 were assessed on it.

5. The land which the village had thus gained by alluvion included an island beyond which the deep-stream of the river flowed till quite recently. But now the deep-stream flows to the west of this island, and, as the latter thus lies on the left bank of the Chenab, which forms the boundary between this district and that of Gujránwála, this plot of land now forms part of the Gujránwála District. The revenue formerly assessed on this plot was Rs. 32.

6. Besides this change caused by the change in the course of the river there has been since the last change of assessment a gain of 50 acres assessed at Rs. 25, and a loss of 25 acres assessed at Rs. 15, or a net gain of 25 acres assessed at Rs. 10. I find that it has not been the practice here to calculate the changes in such estates every year and ascertain whether the fixed minimum is exceeded in any one year or not ; but the changes are carried on from year to year, and when the total exceeds the 10 per cent. limit effect is given to it.

7. Thus, supposing in the case of the present village 30 acres were were gained and 10 lost every year for seven years, no change would be made for six years, but in the seventh it would be reported that *in that year* 210 acres had been gained and 70 lost, thus causing a net gain of 130 acres, and as this amount would exceed the 10 per cent. minimum, the assessment of the estate would be increased accordingly. During the seven years the same land might be gained, and lost again and regained, but still it would all be shown as the occurrences of one year.

8. In my opinion this course is not the one prescribed in the rules. I think that papers should be made out each year according to the actual state of things and tested just as is done with villages where effect is given to every gain or loss, and when in any year the difference between the amount shown in the papers for that year and the amount actually paid by the village in the previous year exceeds 10 per cent. on the revenue assessed at settlement, then effect should be given to the revised assessment. The results of this procedure would be much the same as that of the present practice, but the measurements would be tested annually, and the correctness of the revised assessment would be verified by testing the measurements of that year only. At present it seems impossible to test its correctness satisfactorily in any way.

9. But the point on which I specially solicit instructions is as to how the area transferred to the Gujránwála district should be treated. The Tahsíldár proposes to calculate as follows :—An area assessed at Rs. 32 has been transferred to the Gujránwála district, therefore Rs. 32 must be deducted from the Rs. 753 at present assessed on the village, leaving Rs. 721 payable. The net loss from alluvion and diluvion is Rs. 10, which is below the 10 per cent. limit, therefore the village must continue to pay Rs. 721.

10. In my opinion, however, the area transferred to the Gujránwála district must be treated as diluvion. It has been lost to this estate by the action of the river, and according to the rules it does not seem that we have to consider what has become of it. It may, and probably will, be assessed in the Gujránwála district, but supposing it has been annexed to an estate to which the 10 per cent. rule applies, and that the rule exempts it from assessment this year, it would not be assessed at all at present. I would therefore say that the loss by diluvion has been Rs. 25 and 32, or Rs. 57, and the gain by alluvion Rs. 15. The net loss is thus Rs. 42, and as this is less than 10 per cent. on the revenue assessed at settlement, I would maintain the assessment at Rs. 753.

11. It is no doubt true that the 53 acres assessed at Rs. 32 were not transferred from the right to the left bank of the river in 1884. The river changed its course a year or two ago, but the Gujránwála authorities have only lately claimed the revenue on this area, and effect will therefore be given to the transfer in the papers of the current season. I do not see, however, that this makes any difference as regards the point under consideration. If my opinion is correct, the transfer should have been treated as diluvion when the river changed its course, and the result would apparently have been just the same.

12. But the zamíndárs of Takht Hazára consider it a great hardship that the land in question should be annexed to the Gujránwála district at all. They claim that all land of which they can claim the proprietary right, including land which has been transferred to the opposite side of the river by a sudden change in the river, should be included in their mauza, and that the mauza as a whole should belong to one district or the other. This in effect seems to have been the practice in this district hitherto, but, as the Settlement Report for this district describes the Chenab as the boundary of this district, and the Deputy Commissioner, Gujránwála, claims the revenue of all lands to the east of the deep-stream, I feel myself compelled to assent to the transfer of such areas as that now in question.

13. If, however, in addition to their land being transferred to another district, the zamíndárs have to pay revenue on it in that district, while that formerly assessed on it in this is not remitted, they will consider that they have been very cruelly treated indeed. Therefore I should be very glad if you find it possible to take the same view of the case as the Tahsíldár, or to obtain the

sanction of the Financial Commissioner to the revenue of Takht Hazára being fixed this year at Rs. 721.

14. I submit the vernacular misl herewith for reference.

No. 971, dated 12th March 1885.

From—Lieut.-Colonel R. P. NISBET, C.I.E., Commissioner and Superintendent, Ráwalpindi Division,
To—The Deputy Commissioner, Shahpur.

WITH reference to your No. 71, dated the 3rd instant, and construction of the rules contained in Financial Commissioner's Circular No. XXXI. of 1881, I concur in the opinion you express that so much of the area of the village of Takht Hazára that has by river action been transferred to the Gujránwála district must be treated as loss by diluvion to the Shahpur district.

2. With reference to the concluding portion of paragraph 9, I beg you will refer me to the rules under which net increases or net decreases by alluvion or diluvion when under 10 per cent. are not to be taken into account. It would appear that the village of Takht Hazára has by alluvion gained an area assessable at Rs. 22, and has lost by diluvion an area assessable at Rs. 32; therefore in accordance with the concluding portion of paragraph 2 of Financial Commissioner's Circular XXXI of 1881, the alluvion and diluvion statement should show a net decrease of Rs. 10, thus making the assessment of the village Rs. 743 instead of Rs. 721.

3. In your reply I should wish you to inform me, after consulting with the Deputy Commissioner, Gujránwála, of the amount that he intends to add to the assessment of his district on account of so much of the area of Takht Hazára as has gone to his side of the river.

No. 294, dated 17th July 1885.

From—J. W. GARDINER, Esquire, Deputy Commissioner, Shahpur,
To—The Commissioner and Superintendent, Ráwalpindi Division.

IN reply to paragraph 2 of your No. 971, dated 12th March last, I have the honor to refer you to your office Circular No. 201-3981, dated 5th November 1869, and to my office reply to it, No. 67, dated 22nd February 1870. The rules on the subject are D. II 15 and 16 of the Rules under the Punjab Land Revenue Act.

2. As explained in paragraph 10 of my No. 71, dated 3rd March, the loss by diluvion in Takht Hazára has been Rs. 57 and the gain by alluvion Rs. 15; so that if the 10 per cent. rule did not apply the assessment would have been reduced by Rs. 42.

3. The Deputy Commissioner, Gujránwála, has added Rs. 16 to the assessment of his district on account of so much of the area of Takht Hazára as has gone to his side of the river.

4. In connection with this reference, I would beg leave to draw your attention to paragraph 4 of letter No. 4301, dated 17th ultimo, from the Senior Secretary to Financial Commissioner to your address, a copy of which was circulated with your Circular No. 115-2714, dated 25th ultimo. From this extract it would appear that the Financial Commissioner is inclined to grant relief in such cases as the present.

No. 366, dated 5th September 1885.

From—J. W. GARDINER, Esquire, Deputy Commissioner, Shahpur,
To—The Commissioner and Superintendent, Ráwalpindi Division.

IN reply to your No. 3186, dated 30th July last, I have the honor to state that as regards the twelve villages concerned the entire area of the village has in no case been transferred to the Gujránwála district. When the whole of the lands of a mauza with the abadi goes over to the Gujránwála side, then as you say, the village is struck out of my district and added by Government order to the Gujránwála district. But I would submit that in every case the

deep stream of the Chenab, according to the rule at present in force, is the boundary between the Shahpur and Gujránwála districts, and that therefore, when a portion of the land of a village is transferred bodily by the action of the river from the right to the left bank, it becomes part of the Gujránwála district and the authorities of that district collect the revenue of it, and would take cognizance, for instance, of an offence committed in it. If this is not so, I do not understand how so much of the area of the village of Takht Hazára as has by river action been transferred to the Gujránwála district can be treated as loss by diluvion to the Shahpur district as laid down in paragraph 1 of your office No. 971, dated 12th March last; and it seems clear that Major Nisbet agreed with my view of the law at present in force. For if I remember rightly he set aside on appeal an order which I had made regarding the partition of lands in one of the very villages now concerned, *viz.*, Mauza Abbal, on the ground that I had no jurisdiction to order partition of lands situate on the left bank of the Chenab. If you consider this view of the law wrong, I would suggest that you refer this decision of Major Nisbet's in the Abbal case to the Financial Commissioner for revision. In such a reference the matter would be, I presume finally decided.

IN THE COURT OF THE COMMISSIONER AND SUPERINTENDENT, RAWALPINDI DIVISION.

Revenue and Miscellaneous Appeal, 392 *of* 1885.

Ziada and 2 others, Shahpur District, defendants, appellants,

versus

Gahna and 8 others, plaintiffs, respondents.

Appeal from the order of Deputy Commissioner, Shahpur, dated 28th January 1885, confirming partition made by Tahsíldár of Bhera.

Grounds.

1st. The file would show that Hukam Singh is the person agreed to by plaintiffs as their arbitrator, and as such defendant appellants' objections concerning his appointment to make partition are worthy of consideration within the meaning of Rules 7 and 12 of the Rule formed under Section 23 of Act XXXIII of 1871.

2nd. The quality of land was not taken into consideration at the time of division, and that all superior plots of lánd have been apportioned to plaintiffs, respondents.

3rd. The terms of the administration paper were not adhered to in making the said partition.

4th. The Lower Courts have exceeded their jurisdiction inasmuch as the land in dispute had been transferred to another district at the time of the said division.

5th. Defendants were not made acquainted with the Judicial Assistant's order. They pray that Hukam Singh's proceedings be considered illegal.

Judgment.

In presence of the parties.

This appeal must be accepted on the fourth ground only, namely, want of jurisdiction in the Deputy Commissioner of Shahpur to order partition of an estate which, situate on the river Chenab, has been transferred wholly to the Gujránwála District by river action.

The previous proceedings are quashed. Those claiming partition can apply in the Gujránwála District.

RAWALPINDI : } LIEUT.-COL. R. P. NISBET, C.I.E.,

Dated 23rd April 1885. } *Offg. Commissioner.*

IN THE COURT OF J. W. GARDINER, ESQUIRE, DEPUTY COMMISSIONER, SHAHPUR DISTRICT.

ORDER.—Bahádur and others of Abbal have presented an appeal against an order of 21st October 1884, by which the Tahsíldár directed Hukam Singh to divide off the share of Gahna in the shamilát deh. Such an appeal does not lie, as the Tahsíldár has no authority to pass a final order in cases of partition of shamilát deh: he can only report for the orders of a full-powered officer. But the Tahsíldár has also reported the case for orders, and so I have heard the petitioners' objections.

It appears that, after hearing the petitioners, the Tahsíldár reported proposals for determining the mode of partition on 6th May 1884. Thereupon the parties were warned to appear before the Judicial Assistant, and on 7th July the Judicial Assistant disposed of the case. He recorded that the present petitioners had failed to appear, and that if they objected to partition only, Gahna's share was to be divided off. In pursuance of this order Gahna and 2 or 3 others paid in the stamp duty, and on 21st October the Tahsíldár directed that Hukam Singh, patwári, should divide off their shares only. On 24th November the petitioners objected to the partition before the Tahsíldár.

Petitioners now allege that some of them attended before Mr. Clifford but they were not called on and therefore did not go into his court. They knew that Gahna appeared before Mr. Clifford, and he told them that all the land should be divided among all the share-holders.

It thus appears that Bahádur, &c., knew perfectly well that the case was called on by Mr. Clifford, but they took no measures to appear in his court, nor to enquire what order he passed. If they had wished to appear in Mr. Clifford's Court they could certainly have done so; for that officer made a point of doing all in his power to procure the attendance of parties in partition cases, and Bahádur, &c., could not have thought that all the land was going to be divided. At least if they wished this to be done, they should have offered to deposit a proportional share of the stamp duty. Instead of doing this they never enquired at the tahsíl what was going on, nor did they interfere in any way until the partition was complete or nearly so.

Bahádur, &c., make several objections.

They contend that the boundaries of their village have not been fixed, and that partition should not take place till this has been done. But this plea has been overruled, and is a bad one; for in a village situate on the edge of the river there are always changes and frequently disputes. There does not appear to be any special dispute about this village. And as the village administration paper allows partition of the shamilát, any sharer can have partition of his share of the land as it exists at any given time. If it appears hereafter that all the land which in this partition has been assumed to be shamilát was not really Abbal land, Gahna, &c., can be made to give up a proportionate share of the land now awarded to them; and, on the other hand, if more land is added to the village hereafter Gahna, &c., can claim a share in it.

Then petitioners objected that Gahna, &c., have been granted undisputed land, while they have been left in possession of disputed land. The plans filed show that this plea is incorrect: Gahna, &c., have land towards the river.

Again, petitioners, object that the whole shamilát should have been divided by arbitrators. No doubt this procedure would have been more satisfactory, but Bahádur, &c., have only themselves to thank that this has not been done. They have done all they could to prevent Gahna getting his share, and, now that they find that he has got it after all, they regret that they did not take part in the partition all along. Also according to the present state of the law they will have to pay full stamp duty calculated on the whole shamilát for the present partition, and if they want further division hereafter, they will have to pay stamp duty over again. So it would have been cheaper if they had all joined in the partition now; but it has been their own fault that they have not done so. The last objection is that Gahna, &c., have got better land than a fair partition would have given them. This is really the only objection worth

consideration, and, if I had any reason to think that the partition has been unfair, I would have ordered a new one. But I see no reason to think that the partition has been unfair. Gahna, &c., have had plots of land assigned them in each of the 2 chaks of which the village is composed, and it seems impossible that the best land has been picked out for them. I have no doubt that whatever partition might have been made Bahádur and his party would have objected to it as unfair, as this is an allegation easy to be made and difficult to refute. I see no reason for disallowing the partition.

The report of the Tahsíldár, dated 13th January 1885, is therefore approved. The partition is sanctioned and all the sharers must pay a proportionate share of the stamp duty.

SHAHPUR : *The 28th January* 1885.	(Sd.) J. W. GARDINER, *Deputy Commissioner.*

N.B.—After writing the above I have heard from the tahsíl Kánúngo that the whole of the land under consideration is situate on the bank of the Chenab, and has been transferred by the action of the river to the Gujránwála district.

I did not understand this when I wrote the order; but on re-consideration I see no reason to change my opinion regarding the fairness and correctness of the partition. It is, however, probable that I had no jurisdiction to decide the case at all. This cannot be helped now.

No. 8539, dated 15th December 1885.

From—R. E. YOUNGHUSBAND, Esquire, Offg. Junior Secretary to Financial Commissioner, Punjab,
To—The Commissioner and Superintendent, Ráwalpindi Division.

I AM directed by the Financial Commissioner to return the Vernacular file received with your letter No. 610, dated the 12th September last (the other enclosures of which have been retained in this office for the present), asking for orders in regard to the riverain boundary between the districts of Shahpur and Gujránwála, and to convey the following remarks.

2. The question to be decided is one of revenue jurisdiction, and the correspondence* shows that hitherto village lands have not passed from the jurisdiction of the revenue officers of the one district to that of the officers of the other district by changes in the deep-stream of the Chenab unless the greater part of the village lands, including the village site itself, has been transferred. In such cases not merely the separated portion, but the whole mauza, went over to the district with which the portion on which the village stands had become incorporated. This is the rule in the North-Western Provinces. It is the only rule which could be adopted without the greatest inconvenience, from a revenue point of view, both to the Government and to the people, and it is the rule which should, in the opinion of the Financial Commissioner, continue to be followed on the Chenab between the districts of Shahpur and Gujránwála.

* See Deputy Commissioner, Shahpur's No. 304, dated 2nd April 1885, and Deputy Commissioner, Gujránwála's No. 434, dated 13th idem.

3. No special instructions for dealing with the lands of river villages on the Chenab in the Shahpur district would appear to be required. The correspondence received with your letter shows that of the 36 villages so situated in 12 only is the 10 per cent. rule followed, and in these also the better rule of taking up every case of increment and decrement may (under section 16 of Part II of Chapter D of the rules under the Land Revenue Act) be adopted, if the proprietors so desire. I am to add that when lands are transferred from one side of the river to the other in an identical form, as appears to have occurred in the case of Takht Hazára, no alteration in the assessment of such lands should ordinarily be made.

NEW SERIES—No. 9.

SELECTIONS FROM THE RECORDS

OF THE OFFICE OF THE

FINANCIAL COMMISSIONER, PUNJAB.

NOTE.—*These papers are printed in continuation of Selection No. XIV of 1869.*

Published by Authority.

No. 35.

CONTENTS.

Lahore:

THE "CIVIL AND MILITARY GAZETTE" PRESS.

Contractors to the Punjab Government.

1887.